



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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Fourth District, Los Angeles

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State Controller

KRISTINE CAZADD
Interim Executive Director

April 15, 2011

Dear Interested Party:

Enclosed are the Agenda, Issue Paper, and Revenue Estimate for the April 26, 2011 Business Taxes Committee meeting. This meeting will address the proposed amendments to Regulations 1807, *Petitions for Reallocation of Local Tax*, and 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax*.

If you are interested in other topics to be considered by the Business Taxes Committee, you may refer to the "Business Taxes Committee" page on the Board's Internet web site (<http://www.boe.ca.gov/meetings/btcommittee.htm>) for copies of Committee discussion or issue papers, minutes, a procedures manual, and a materials preparation and review schedule arranged according to subject matter and meeting date.

Thank you for your input on these issues and I look forward to seeing you at the Business Taxes Committee meeting at **10:00 a.m.** on **April 26, 2011** in Room 121 at the address shown above.

Sincerely,

Jeffrey L. McGuire, Deputy Director
Sales and Use Tax Department

JLM:llw

Enclosures

cc: (all with enclosures)

Honorable Jerome E. Horton, Chairman, Fourth District
Honorable Michelle Steel, Vice Chair, Third District
Honorable Betty T. Yee, Member, First District (MIC 71)
Senator George Runner (Ret.), Member, Second District (MIC 78)
Honorable John Chiang, State Controller, c/o Ms. Marcy Jo Mandel (via e-mail)

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(Via E-mail)

Mr. Robert Thomas, Board Member's Office, Fourth District

Mr. Neil Shah, Board Member's Office, Third District

Mr. Tim Treichelt, Board Member's Office, Third District

Mr. Alan LoFaso, Board Member's Office, First District

Ms. Mengjun He, Board Member's Office, First District

Mr. Lee Williams, Board Member's Office, Second District

Ms. Natasha Ralston Ratcliff, State Controller's Office

Ms. Kristine Cazadd

Mr. Randy Ferris

Mr. Robert Tucker

Mr. Cary Huxsoll

Ms. Susanne Buehler

Mr. Geoffrey E. Lyle

Ms. Leila Hellmuth

Ms. Lynn Whitaker

Ms. Judi Pierce

Formal Issue Paper Number 11-004

Agenda
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¹ Because the proposed revisions are substantially similar in both regulations, we have included only the proposed revisions to Regulation 1807 in this agenda. The full text of the proposed revisions for both Regulations 1807 and 1828 can be found in Exhibits 3, 4, and 5.

AGENDA — April 26, 2011 Business Taxes Committee Meeting
Petitions for the reallocation of local and district taxes

Item 2 – for information – holding local tax distributions in suspense while a suspected misallocation is investigated.	<p>During the interested parties process and in written submission, the HdL Companies commented that procedures should be included in the BOE procedure manuals explaining when distributions can be held in suspense. Staff does not believe it is necessary to develop formal procedures for holding distributions or requesting that distributions be held.</p> <p>This issue does not involve regulatory amendment and does not require Board action; it is included for informational purposes and possible discussion.</p>
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AGENDA — April 26, 2011 Business Taxes Committee Meeting

Petitions for the reallocation of local and district taxes

Action Item	Regulatory Language Proposed by Staff (Exhibit 3)	Regulatory Language Proposed by Mr. Johan Klehs and supported by the HdL Companies (Exhibit 4)	Regulatory Language Proposed by MuniServices Alternative 3.1 Exhibit (5)	Regulatory Language Proposed by MuniServices Alternative 3.2 Exhibit (5)
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Action 1	Regulation 1807. PETITIONS FOR REALLOCATION OF LOCAL TAX.	Regulation 1807. PETITIONS FOR REALLOCATION OF LOCAL TAX.	Regulation 1807.1. PETITIONS FOR REALLOCATION OF LOCAL TAX.	Regulation 1807. PETITIONS FOR REALLOCATION OF LOCAL TAX.
1807 (a)(3)(G)	(a) DEFINITIONS. (3) PETITION.	(a) DEFINITIONS. (3) PETITION.	(a) DEFINITIONS. (3) PETITION.	(a) DEFINITIONS. (3) PETITION.
and 1807.1 (a)(3)(G)	<p>“Petition” also includes an appeal by a jurisdiction from a notification from the Local Revenue Allocation Unit of the Sales and Use Tax Department that local taxes previously allocated to it were misallocated and will be reallocated. Such a jurisdiction may object to that notification by submitting a written petition to the Allocation Group within 30 days of the date of mailing of the notification <u>or within a period of extension described below.</u> The petition must include a copy of the notification and specify the reason the jurisdiction disputes it. If a jurisdiction does not submit such a petition within 30 days of the date of mailing of the notification, <u>or within a period of extension,</u> the notification of the Local Revenue Allocation Unit is final as to the jurisdiction so notified.</p> <p><u>The jurisdiction may request a 30-day extension to submit a written objection to a notification of misallocation from the Local Revenue Allocation Unit. Such request must provide a reasonable explanation for the requesting jurisdiction's inability to submit its</u></p>	<p>“Petition” also includes an appeal by a jurisdiction from a notification from the Local Revenue Allocation Unit of the Sales and Use Tax Department that local taxes previously allocated to it were misallocated and will be reallocated. Such a jurisdiction may object to that notification by submitting a written petition to the Allocation Group within 30 days of the date of mailing of the notification <u>or within a period of extension described below.</u> The petition must include a copy of the notification and specify the reason the jurisdiction disputes it. If a jurisdiction does not submit such a petition within 30 days of the date of mailing of the notification, <u>or within a period of extension,</u> the notification of the Local Revenue Allocation Unit is final as to the jurisdiction so notified.</p> <p><u>The jurisdiction may request a 30-day extension to submit a written objection to a notification of misallocation from the Local Revenue Allocation Unit. Such request must provide a reasonable explanation for the requesting jurisdiction's inability to submit its</u></p>	<p>“Petition” also includes an appeal by a jurisdiction from a notification from the Local Revenue Allocation Unit of the Sales and Use Tax Department that local taxes previously allocated to it were misallocated and will be reallocated. Such a jurisdiction may object to that notification by submitting a written petition to the Allocation Group within 30 days of the date of mailing of the notification <u>or within a period of extension described below.</u> The petition must include a copy of the notification and specify the reason the jurisdiction disputes it. If a jurisdiction does not submit such a petition within 30 days of the date of mailing of the notification, <u>or within a period of extension,</u> the notification of the Local Revenue Allocation Unit is final as to the jurisdiction so notified.</p> <p><u>The jurisdiction may request a 30-day extension to submit a written objection to a notification of misallocation from the Local Revenue Allocation Unit. Such request must provide a reasonable explanation for the requesting jurisdiction's inability to submit its</u></p>	<p>“Petition” also includes an appeal by a jurisdiction from a notification from the Local Revenue Allocation Unit of the Sales and Use Tax Department that local taxes previously allocated to it were misallocated and will be reallocated. Such a jurisdiction may object to that notification by submitting a written petition to the Allocation Group within 30 days of the date of mailing of the notification <u>or within a period of extension described below.</u> The petition must include a copy of the notification and specify the reason the jurisdiction disputes it. If a jurisdiction does not submit such a petition within 30 days of the date of mailing of the notification, <u>or within a period of extension,</u> the notification of the Local Revenue Allocation Unit is final as to the jurisdiction so notified.</p> <p><u>The jurisdiction may request a 30-day extension to submit a written objection to a notification of misallocation from the Local Revenue Allocation Unit. Such request must provide a reasonable explanation for the requesting jurisdiction's inability to submit its</u></p>

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	<u>objection within 30 days and must be received by the Local Revenue Allocation Unit within 30 days of the date of mailing of its notification. Within five days of receipt of the request, the Local Revenue Allocation Unit will mail notification to the jurisdiction whether the request is granted or denied. If a timely request for an extension is submitted, the time for the jurisdiction to file a written objection is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the jurisdiction to submit a written objection to the notification of the Local Revenue Allocation Unit is further extended to the 60th day after the date of mailing of the notification of misallocation.</u>	<u>objection within 30 days and must be received by the Local Revenue Allocation Unit within 30 days of the date of mailing of its notification. Within five days of receipt of the request, the Local Revenue Allocation Unit will mail notification to the jurisdiction whether the request is granted or denied. If a timely request for an extension is submitted, the time for the jurisdiction to file a written objection is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the jurisdiction to submit a written objection to the notification of the Local Revenue Allocation Unit is further extended to the 60th day after the date of mailing of the notification of misallocation.</u>	<u>objection within 30 days and must be received by the Local Revenue Allocation Unit within 30 days of the date of mailing of its notification. Within five days of receipt of the request, the Local Revenue Allocation Unit will mail notification to the jurisdiction whether the request is granted or denied. If a timely request for an extension is submitted, the time for the jurisdiction to file a written objection is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the jurisdiction to submit a written objection to the notification of the Local Revenue Allocation Unit is further extended to the 60th day after the date of mailing of the notification of misallocation.</u>	<u>objection within 30 days and must be received by the Local Revenue Allocation Unit within 30 days of the date of mailing of its notification. Within five days of receipt of the request, the Local Revenue Allocation Unit will mail notification to the jurisdiction whether the request is granted or denied. If a timely request for an extension is submitted, the time for the jurisdiction to file a written objection is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the jurisdiction to submit a written objection to the notification of the Local Revenue Allocation Unit is further extended to the 60th day after the date of mailing of the notification of misallocation.</u>
1807 (b)(2) and 1807.1 (b)(2)	(b) REVIEW BY ALLOCATION GROUP.	(b) REVIEW BY ALLOCATION GROUP.	(b) REVIEW BY ALLOCATION GROUP. (2) The Allocation Group will review the petition and issue to the petitioner a written decision to grant or deny the petition, including the basis for that decision. The written decision will also note the date of knowledge, and if other than the date the petition was received, will include the basis for that date. A reallocation will be made if the preponderance of evidence, whether provided by petitioner or obtained by Board staff as part of its	(b) REVIEW BY ALLOCATION GROUP. (2) The Allocation Group will review the petition and issue to the petitioner a written decision to grant or deny the petition, including the basis for that decision. The written decision will also note the date of knowledge, and if other than the date the petition was received, will include the basis for that date. A reallocation will be made if the preponderance of evidence, whether provided by petitioner or obtained by Board staff as part of its

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			investigation of the petition, shows that there was a misallocation. If the preponderance of evidence does not show that a misallocation occurred, the petition will be denied. <u>The Allocation Group has 270 days from the date the Allocation Group receives the petition to conduct its initial investigation of the petition. At the end of that 270-day period, if no decision has been issued, the Allocation Group and petitioner will meet and confer, within 30 days, on the scope and timeline of further investigations, if any, according to rules to be promulgated in the CPPM.</u>	investigation of the petition, shows that there was a misallocation. If the preponderance of evidence does not show that a misallocation occurred, the petition will be denied. <u>The Allocation Group has 270 days from the date the Allocation Group receives the petition to conduct its initial investigation of the petition. At the end of that 270-day period, if no decision has been issued, the Allocation Group and petitioner will meet and confer, within 30 days, on the scope and timeline of further investigations, if any, according to rules to be promulgated in the CPPM.</u>
1807 (b)(3) and 1807.1 (b)(3)			(3) If the Allocation Group does not issue a decision within six months of the date it receives a valid petition. <u>At any time after the meet-and-confer meeting in (b)(2), the petitioner may request that the Allocation Group issue its decision without regard to the status of its investigation. Within 90-30 days of receiving such a request, the Allocation Group will issue its decision based on the information in its possession.</u>	(3) If the Allocation Group does not issue a decision within six months of the date it receives a valid petition. <u>At any time after the meet-and-confer meeting in (b)(2), the petitioner may request that the Allocation Group issue its decision without regard to the status of its investigation. Within 90-30 days of receiving such a request, the Allocation Group will issue its decision based on the information in its possession.</u>

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1807 (b)(6) and 1807.1 (b)(6)	(6) The petitioner or any notified jurisdiction may appeal the decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's decision, or within a period of extension authorized by subdivision (b)(910). If no such timely objection is submitted, the decision of the Allocation Group is final as to the petitioner and all notified jurisdictions.		(6) The petitioner or any notified jurisdiction may appeal the decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's decision, or within a period of extension authorized by subdivision (b)(910). If no such timely objection is submitted, the decision of the Allocation Group is final as to the petitioner and all notified jurisdictions.	(6) The petitioner or any notified jurisdiction may appeal the decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's decision, or within a period of extension authorized by subdivision (b)(910). If no such timely objection is submitted, the decision of the Allocation Group is final as to the petitioner and all notified jurisdictions.
1807 (b)(7) and 1807.1 (b)(7)		(7) If the petitioner or a notified jurisdiction submits a timely written objection to the decision of the Allocation Group, the Allocation Group will consider the objection and, <u>within 90 days</u> , issue a written supplemental decision to grant or deny the objection, including the basis for that decision. A copy of the supplemental decision will be mailed to the petitioner, to any notified jurisdiction, and to any other jurisdiction that is substantially affected by the supplemental decision.	(7) If the petitioner or a notified jurisdiction submits a timely written objection to the decision of the Allocation Group, the Allocation Group will consider the objection and issue a written supplemental decision to grant or deny the objection, including the basis for that decision. <u>The Allocation Group has 90-days to conduct its supplemental investigation of the petition. At the end of the 90-day period, the Allocation Group and petitioner will meet and confer on the scope and timeline of further investigations, if any, according to rules to be promulgated in the CPPM.</u> A copy of the supplemental decision will be mailed to the petitioner, to any notified jurisdiction, and to any other jurisdiction that is substantially affected by the supplemental decision.	(7) If the petitioner or a notified jurisdiction submits a timely written objection to the decision of the Allocation Group, the Allocation Group will consider the objection and issue a written supplemental decision to grant or deny the objection, including the basis for that decision. <u>The Allocation Group has 90-days to conduct its supplemental investigation of the petition. At the end of the 90-day period, the Allocation Group and petitioner will meet and confer on the scope and timeline of further investigations, if any, according to rules to be promulgated in the CPPM.</u> A copy of the supplemental decision will be mailed to the petitioner, to any notified jurisdiction, and to any other jurisdiction that is substantially affected by the supplemental decision.

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1807 (b)(8) and 1807.1 (b)(8)	<u>(8) If the Allocation Group does not issue a supplemental decision within six months of the date it receives a written timely objection to the decision of the Allocation Group, the petitioner or any notified jurisdiction may request that the Allocation Group issue its supplemental decision without regard to the status of its investigation. Within 90 days of receiving such a request, the Allocation Group will issue its supplemental decision based on the information in its possession.</u>		<u>(8) At any time after the meet and confer in (b)(7), the petitioner may request that the Allocation Group issue its supplemental decision without regard to the status of its investigation. Within 30 days of receiving such a request, the Allocation Group will issue its decision based on the information in its possession.</u>	<u>(8) At any time after the meet and confer in (b)(7), the petitioner may request that the Allocation Group issue its supplemental decision without regard to the status of its investigation. Within 30 days of receiving such a request, the Allocation Group will issue its decision based on the information in its possession.</u>
1807 (b)(9) and 1807.1 (b)(9)	(89) The petitioner or any notified jurisdiction may appeal the supplemental decision of the Allocation Group by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(910). If no such timely objection is submitted, the supplemental decision of the Allocation Group is final as to the petitioner and all notified jurisdictions.		(89) The petitioner or any notified jurisdiction may appeal the supplemental decision of the Allocation Group by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(910). If no such timely objection is submitted, the supplemental decision of the Allocation Group is final as to the petitioner and all notified jurisdictions.	(89) The petitioner or any notified jurisdiction may appeal the supplemental decision of the Allocation Group by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(910). If no such timely objection is submitted, the supplemental decision of the Allocation Group is final as to the petitioner and all notified jurisdictions.
1807 (b)(10) and 1807.1 (b)(10)	(910) The petitioner or any notified jurisdiction may request a 30-day extension to submit a written objection under subdivision (b)(6) or under subdivision (b)(89), as applicable. Such request must provide a reasonable explanation for the requesting jurisdiction's inability to submit its objection within 30		(910) The petitioner or any notified jurisdiction may request a 30-day extension to submit a written objection under subdivision (b)(6) or under subdivision (b)(89), as applicable. Such request must provide a reasonable explanation for the requesting jurisdiction's inability to submit its objection within 30	(910) The petitioner or any notified jurisdiction may request a 30-day extension to submit a written objection under subdivision (b)(6) or under subdivision (b)(89), as applicable. Such request must provide a reasonable explanation for the requesting jurisdiction's inability to submit its objection within 30

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	days, must be copied to all other jurisdictions to whom the Allocation Group mailed a copy of its decision or supplemental decision (to the extent known by the requesting jurisdiction), and must be <i>received</i> by the Allocation Group within 30 days of the date of mailing of its decision or supplemental decision. Within five days of receipt of the request, the Allocation Group will mail notification to the petitioner and to all notified jurisdictions whether the request is granted or denied. If a timely request for an extension is submitted, the time for the petitioner and any notified jurisdiction to file a written objection to the decision or supplemental decision of the Allocation Group is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the petitioner and all notified jurisdictions to submit a written objection to the decision or supplemental decision of the Allocation Group is further extended to the 60 th day after the date of mailing of the decision or supplemental decision.		days, must be copied to all other jurisdictions to whom the Allocation Group mailed a copy of its decision or supplemental decision (to the extent known by the requesting jurisdiction), and must be <i>received</i> by the Allocation Group within 30 days of the date of mailing of its decision or supplemental decision. Within five days of receipt of the request, the Allocation Group will mail notification to the petitioner and to all notified jurisdictions whether the request is granted or denied. If a timely request for an extension is submitted, the time for the petitioner and any notified jurisdiction to file a written objection to the decision or supplemental decision of the Allocation Group is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the petitioner and all notified jurisdictions to submit a written objection to the decision or supplemental decision of the Allocation Group is further extended to the 60 th day after the date of mailing of the decision or supplemental decision.	days, must be copied to all other jurisdictions to whom the Allocation Group mailed a copy of its decision or supplemental decision (to the extent known by the requesting jurisdiction), and must be <i>received</i> by the Allocation Group within 30 days of the date of mailing of its decision or supplemental decision. Within five days of receipt of the request, the Allocation Group will mail notification to the petitioner and to all notified jurisdictions whether the request is granted or denied. If a timely request for an extension is submitted, the time for the petitioner and any notified jurisdiction to file a written objection to the decision or supplemental decision of the Allocation Group is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the petitioner and all notified jurisdictions to submit a written objection to the decision or supplemental decision of the Allocation Group is further extended to the 60 th day after the date of mailing of the decision or supplemental decision.
1807 (c)(1) and 1807.1	(c) REVIEW BY APPEALS DIVISION. (1) The petitioner or any notified jurisdiction may appeal the supplemental decision of the Allocation Group by submitting a	(c) REVIEW BY APPEALS DIVISION.	(c) REVIEW BY APPEALS DIVISION. (1) The petitioner or any notified jurisdiction may appeal the supplemental decision of the Allocation Group by submitting a	(c) REVIEW BY APPEALS DIVISION. (1) The petitioner or any notified jurisdiction may appeal the supplemental decision of the Allocation Group by submitting a

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(c)(1)	written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's supplemental decision, or within a period of extension authorized by subdivision (b)(910). Such an objection must state the basis for the objecting jurisdiction's disagreement with the supplemental decision and include all additional information in its possession that supports its position.		written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's supplemental decision, or within a period of extension authorized by subdivision (b)(910). Such an objection must state the basis for the objecting jurisdiction's disagreement with the supplemental decision and include all additional information in its possession that supports its position.	written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's supplemental decision, or within a period of extension authorized by subdivision (b)(910). Such an objection must state the basis for the objecting jurisdiction's disagreement with the supplemental decision and include all additional information in its possession that supports its position.
1807 (c)(2) and 1807.1 (c)(2)	(2) If a timely objection to its supplemental decision is submitted, the Allocation Group will, <u>within 30 days of receipt of the objection</u> , prepare the file and forward it to the Appeals Division. The petitioner, all notified jurisdictions, <u>any other jurisdiction that would be substantially affected if the petition were granted</u> , and the Sales and Use Tax Department will thereafter be mailed notice of the appeals conference, which will generally be sent at least 45 days prior to the scheduled date of the conference.	(2) If a timely objection to its supplemental decision is submitted, the Allocation Group will, <u>within 30 days of receipt of the objection</u> , prepare the file and forward it to the Appeals Division. The petitioner, all notified jurisdictions, <u>any other jurisdiction that would be substantially affected if the petition were granted</u> , and the Sales and Use Tax Department will thereafter be mailed notice of the appeals conference, which will generally be sent at least 45 days prior to the scheduled date of the conference. <u>The Appeals Division shall schedule an appeals conference within 6 months from receipt of the file from the Allocation Group.</u>	(2) If a timely objection to its supplemental decision is submitted, the Allocation Group will, <u>within 30 days of receipt of the objection</u> , prepare the file and forward it to the Appeals Division. The petitioner, all notified jurisdictions, <u>any other jurisdiction that would be substantially affected if the petition were granted</u> , and the Sales and Use Tax Department will thereafter be mailed notice of the appeals conference, which will generally be sent at least 45 days prior to the scheduled date of the conference.	(2) If a timely objection to its supplemental decision is submitted, the Allocation Group will, <u>within 30 days of receipt of the objection</u> , prepare the file and forward it to the Appeals Division. The petitioner, all notified jurisdictions, <u>any other jurisdiction that would be substantially affected if the petition were granted</u> , and the Sales and Use Tax Department will thereafter be mailed notice of the appeals conference, which will generally be sent at least 45 days prior to the scheduled date of the conference.
1807 (c)(2)(B)		If the Department sends notice ^(B) to the Appeals Division in accordance with the subdivision (c)(2)(A) no later than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will suspend its review and		

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		the dispute will be returned to the Department. The Department will thereafter issue a second supplemental decision <u>within 60 days</u> , or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.		
1807 (c)(2)(C)		(c) If the Department sends notice to the Appeals Division in accordance with subdivision (c)(2)(A) less than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will decide whether the dispute should be returned to the Department or remain with the Appeals Division, and notify the parties accordingly. If the dispute is returned to the Department, the Department will thereafter issue a second supplemental decision <u>within 60 days</u> , or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.		
1807 (c)(2)(D) and 1807.1 (c)(2)(D)	(b) Where the Department issues a second supplemental decision in accordance with subdivision (c)(2)(B) or (c)(2)(C), it will send a copy of the decision to the petitioner, any notified jurisdiction, and any other jurisdiction that is substantially affected by the second supplemental decision, any of whom may appeal	(b) Where the Department issues a second supplemental decision in accordance with subdivision (c)(2)(B) or (c)(2)(C), it will send a copy of the decision to the petitioner, any notified jurisdiction, and any other jurisdiction that is substantially affected by the second supplemental decision, any of whom may appeal	(b) Where the Department issues a second supplemental decision in accordance with subdivision (c)(2)(B) or (c)(2)(C), it will send a copy of the decision to the petitioner, any notified jurisdiction, and any other jurisdiction that is substantially affected by the second supplemental decision, any of whom may appeal	(b) Where the Department issues a second supplemental decision in accordance with subdivision (c)(2)(B) or (c)(2)(C), it will send a copy of the decision to the petitioner, any notified jurisdiction, and any other jurisdiction that is substantially affected by the second supplemental decision, any of whom may appeal

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	the second supplemental decision by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(9 10). If no such timely objection is submitted, the second supplemental decision is final as to the petitioner and all notified jurisdictions.	the second supplemental decision by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(9). <u>If an objection to a second supplemental decision is filed by either the petitioner or notified jurisdiction, it will be immediately forwarded to the Appeals Division. An appeals conference shall be scheduled within 90 days of receipt of the objection.</u> If no such timely objection is submitted, the second supplemental decision is final as to the petitioner and all notified jurisdictions.	the second supplemental decision by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(9 10). If no such timely objection is submitted, the second supplemental decision is final as to the petitioner and all notified jurisdictions.	the second supplemental decision by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(9 10). If no such timely objection is submitted, the second supplemental decision is final as to the petitioner and all notified jurisdictions.
1807 (c)(3) and 1807.1 (c)(3)	(3) The appeals conference is not an adversarial proceeding, but rather is an informal discussion where the petitioner, any notified jurisdictions who wish to participate, and the Sales and Use Tax Department have the opportunity to explain their respective positions regarding the relevant facts and law to the Appeals Division conference holder. To make the conference most productive, each participant should submit all facts, law, argument, and other information in support of its position to the Appeals Division conference holder, and to the other participants, at least 15 days before the date of the appeals conference; however, relevant facts and arguments will be accepted at	(3) The appeals conference is not an adversarial proceeding, but rather is an informal discussion where the petitioner, any notified jurisdictions who wish to participate, and the Sales and Use Tax Department have the opportunity to explain their respective positions regarding the relevant facts and law to the Appeals Division conference holder. To make the conference most productive, each participant should submit all facts, law, argument, and other information in support of its position to the Appeals Division conference holder, and to the other participants, at least 15 days before the date of the appeals conference; however, relevant facts and arguments will be accepted at	(3) The appeals conference is not an adversarial proceeding, but rather is an informal discussion where the petitioner, any notified jurisdictions who wish to participate, and the Sales and Use Tax Department have the opportunity to explain their respective positions regarding the relevant facts and law to the Appeals Division conference holder. To make the conference most productive, each participant should submit all facts, law, argument, and other information in support of its position to the Appeals Division conference holder, and to the other participants, at least 15 days before the date of the appeals conference; however, relevant facts and arguments will be accepted at	(3) The appeals conference is not an adversarial proceeding, but rather is an informal discussion where the petitioner, any notified jurisdictions who wish to participate, and the Sales and Use Tax Department have the opportunity to explain their respective positions regarding the relevant facts and law to the Appeals Division conference holder. To make the conference most productive, each participant should submit all facts, law, argument, and other information in support of its position to the Appeals Division conference holder, and to the other participants, at least 15 days before the date of the appeals conference; however, relevant facts and arguments will be accepted at

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Petitions for the reallocation of local and district taxes

Action Item	Regulatory Language Proposed by Staff (Exhibit 3)	Regulatory Language Proposed by Mr. Johan Klehs and supported by the HdL Companies (Exhibit 4)	Regulatory Language Proposed by MuniServices Alternative 3.1 Exhibit (5)	Regulatory Language Proposed by MuniServices Alternative 3.2 Exhibit (5)
	any time at or before the appeals conference. If, during the appeals conference, a participant requests permission to submit additional written arguments and documentary evidence, the conference holder may grant that participant 45-30 days after the appeals conference, or 30 days with sufficient justification , to submit to the conference holder, with copies to all other participants, such additional arguments and evidence. Any other participant at the conference who is in opposition to the requesting participant on the issue(s) covered by the additional submission is allowed 45-30 days to submit to the conference holder, with copies to all other participants, arguments and evidence in response. No request by a participant for further time to submit additional arguments or evidence will be granted without the approval of the Assistant Chief Counsel of the Appeals Division or his or her designee. The Appeals Division on its own initiative may also request, at or after the appeals conference, further submissions from any participant.	any time at or before the appeals conference. If, during the appeals conference, a participant requests permission to submit additional written arguments and documentary evidence, the conference holder may grant that participant 45-30 days after the appeals conference, or 30 days with sufficient justification , to submit to the conference holder, with copies to all other participants, such additional arguments and evidence. Any other participant at the conference who is in opposition to the requesting participant on the issue(s) covered by the additional submission is allowed 45-30 days to submit to the conference holder, with copies to all other participants, arguments and evidence in response. No request by a participant for further time to submit additional arguments or evidence will be granted without the approval of the Assistant Chief Counsel of the Appeals Division or his or her designee. The Appeals Division on its own initiative may also request, at or after the appeals conference, further submissions from any participant.	any time at or before the appeals conference. If, during the appeals conference, a participant requests permission to submit additional written arguments and documentary evidence, the conference holder may grant that participant 45-30 days after the appeals conference, or 30 days with sufficient justification , to submit to the conference holder, with copies to all other participants, such additional arguments and evidence. Any other participant at the conference who is in opposition to the requesting participant on the issue(s) covered by the additional submission is allowed 45-30 days to submit to the conference holder, with copies to all other participants, arguments and evidence in response. No request by a participant for further time to submit additional arguments or evidence will be granted without the approval of the Assistant Chief Counsel of the Appeals Division or his or her designee. The Appeals Division on its own initiative may also request, at or after the appeals conference, further submissions from any participant. <u>The Appeals Division will not accept argument or evidence beyond these 30-day deadlines, except upon agreement of all participants.</u>	any time at or before the appeals conference. If, during the appeals conference, a participant requests permission to submit additional written arguments and documentary evidence, the conference holder may grant that participant 45-30 days after the appeals conference, or 30 days with sufficient justification , to submit to the conference holder, with copies to all other participants, such additional arguments and evidence. Any other participant at the conference who is in opposition to the requesting participant on the issue(s) covered by the additional submission is allowed 45-30 days to submit to the conference holder, with copies to all other participants, arguments and evidence in response. No request by a participant for further time to submit additional arguments or evidence will be granted without the approval of the Assistant Chief Counsel of the Appeals Division or his or her designee. The Appeals Division on its own initiative may also request, at or after the appeals conference, further submissions from any participant. <u>The Appeals Division will not accept argument or evidence beyond these 30-day deadlines, except upon agreement of all participants.</u>
1807 (c)(4) – (c)(9)		(4) Within 90 days after the final submission authorized by subdivision (c)(3), the Appeals		

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		<p>Division will issue a written Decision and Recommendation (D&R) setting forth the applicable facts and law and the conclusions of the Appeals Division. The Chief Counsel may allow up to 90-30 additional days to prepare the D&R upon request of the Appeals Division. Both the request and the Chief Counsel's response granting or denying the request for additional time must be in writing and copies provided to the petitioner, all notified jurisdictions, and the Sales and Use Tax Department. A copy of the D&R will be mailed to the petitioner, to all notified jurisdictions, to any other jurisdiction that will be substantially affected by the D&R, and to the Sales and Use Tax Department.</p> <p>(5) The petitioner or any notified jurisdiction may appeal the D&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R. <u>if no such timely request for Board hearing is submitted, the D&R is final as to the petitioner and all notified jurisdictions.</u></p> <p>—(6) The petitioner, any notified jurisdiction, or the Sales and Use Tax Department may also appeal the D&R, or any Supplemental D&R (SD&R), by submitting a written request for reconsideration (RFR) to the Appeals Division before expiration of the time during which a</p>		

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		<p>timely request for Board hearing may be submitted, or if a Board hearing has been requested, prior to that hearing. If a jurisdiction or the Sales and Use Tax Department submits an RFR before the time for requesting a Board hearing has expired, the Appeals Division will issue an SD&R to consider the request, after obtaining whatever additional information or arguments from the parties that it deems appropriate. If an RFR is submitted after a jurisdiction has requested a Board hearing, the Appeals Division will determine whether it should issue an SD&R in response. A copy of the SD&R issued under this subdivision or under subdivision (c)(7) will be mailed to the petitioner, to all notified jurisdictions, to any other jurisdiction that will be substantially affected by the SD&R, and to the Sales and Use Tax Department. The petitioner or any notified jurisdiction may appeal the SD&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the SD&R.</p> <p>— (7) Whether or not an RFR is submitted, at any time prior to the time the recommendation in the D&R or prior SD&R is acted on by the Department as a final matter or the Board has held an oral hearing on the petition, the Appeals Division may issue an SD&R as it deems</p>		

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		<p>necessary to augment, clarify, or correct the information, analysis, or conclusions contained in the D&R or any prior SD&R.</p> <p>— (8) If no RFR is submitted under subdivision (c)(6) or request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R or any SD&R, the D&R or SD&R as applicable is final as to the petitioner and all notified jurisdictions unless the Appeals Division issues an SD&R under subdivision (c)(7).</p>		
1807 (d)(1) and 1807.1 (d)(1)		<p>(d) REVIEW BY BOARD.</p> <p>(1) The petitioner or any notified jurisdiction may submit a written request for Board hearing if it does so to the Board Proceedings Division within 60 days of the date of mailing of the D&R or any SD&R. Such a request must state the basis for the jurisdiction's disagreement with the D&R or SD&R as applicable and include all additional information in its possession that supports its position.</p>	<p>(d) REVIEW BY BOARD.</p> <p>(1) The petitioner or any notified jurisdiction may submit a written request for Board hearing if it does so to the Board Proceedings Division within 60 days of the date of mailing of the D&R or any SD&R. Such a request must state the basis for the jurisdiction's disagreement with the D&R or SD&R as applicable and include all additional information in its possession that supports its position, <u>along with justification why that additional information was not included in the Appeals Conference. Board Members will rule on the admissibility of that additional information no later than 75 days before the date the hearing is set. The Board will promulgate policies regarding the scheduling of these admissibility hearings.</u></p>	<p>(d) REVIEW BY BOARD.</p> <p>(1) The petitioner or any notified jurisdiction may submit a written request for Board hearing if it does so to the Board Proceedings Division within 60 days of the date of mailing of the D&R or any SD&R. Such a request must state the basis for the jurisdiction's disagreement with the D&R or SD&R as applicable and include all additional information in its possession that supports its position, <u>along with justification why that additional information was not included in the Appeals Conference. Board Members will rule on the admissibility of that additional information no later than 75 days before the date the hearing is set. The Board will promulgate policies regarding the scheduling of these admissibility hearings.</u></p>

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1807 (d)(2)		(2) If the Board Proceedings Division receives a timely request for hearing under subdivision (d)(1), it will notify the Sales and Use Tax Department, the petitioner, any notified jurisdiction, any other jurisdiction that would be substantially affected if the petition were granted, and the taxpayer(s) whose allocations are the subject of the petition, that the petition for reallocation of local tax is being scheduled for a Board hearing to determine the proper allocation. <u>The notice of hearing will be issued within 90 days from the date of the request for hearing.</u>		
1807 (g) and 1807.1 (g)	<p>(g) OPERATIVE DATE AND TRANSITION RULES.</p> <p>This regulation is intended to reduce the time required to decide the validity of reallocation petitions and otherwise improve the process for doing so. <u>Regulation 1807 was repealed and readopted in 2008. It is—The readopted regulation is</u> intended to have a neutral impact only on the current dispute over the continuing validity of certain petitions that are <u>were</u> governed by prior Regulation 1807 (effective February 22, 2003).</p> <p>(1) The operative date of this regulation <u>as readopted in 2008 and any amendments thereto is the effective date it becomes effective</u> under Section 11343.4 of the</p>		<p>(g) OPERATIVE DATE AND TRANSITION RULES. This regulation is intended to reduce the time required to decide the validity of reallocation petitions and otherwise improve the process for doing so. <u>It</u> is intended to have a neutral impact only on the current dispute over the continuing validity of certain petitions that are governed by prior Regulation 1807 (effective February 22, 2003).</p> <p>(1) The operative date of this regulation is the date it becomes effective under Section 11343.4 of the Government Code (thirty days after it has been approved by the Office of Administrative Law and forwarded to the Secretary of State) and it shall have no retroactive</p>	<p>(g) OPERATIVE DATE AND TRANSITION RULES. This regulation is intended to reduce the time required to decide the validity of reallocation petitions and otherwise improve the process for doing so. <u>It</u> is intended to have a neutral impact only on the current dispute over the continuing validity of certain petitions that are governed by prior Regulation 1807 (effective February 22, 2003).</p> <p>(1) The operative date of this regulation is the date it becomes effective under Section 11343.4 of the Government Code (thirty days after it has been approved by the Office of Administrative Law and forwarded to the Secretary of State) and it shall have no retroactive</p>

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	<p>Government Code (thirty days after it has been approved <u>approval</u> by the Office of Administrative Law and forwarded <u>forwarding</u> to the Secretary of State) and it <u>there</u> shall have <u>be</u> no retroactive effect.</p> <p>Petitions filed prior to the operative date of this regulation, Notwithstanding subdivision (g)(3), petitions shall be reviewed, appealed and decided in accordance with this regulation as to procedures occurring after that its operative date or that of any amendments thereto.</p> <p>(3) All such petitions filed prior to January 1, 2003 and denied by Board Management must have perfected any access they may have had to a Board Member hearing no later than 60 days after the September 10, 2008, operative date of this regulation.</p>		<p>effect.</p> <p>(2) Petitions filed prior to the operative date of this regulation, shall be reviewed, appealed and decided in accordance with this regulation as to procedures occurring after that date. All such petitions filed prior to January 1, 2003 and denied by Board Management must perfect any access they may have to a Board Member hearing no later than 60 days after the operative date of this regulation</p>	<p>effect.</p> <p>(2) Petitions filed prior to the operative date of this regulation, shall be reviewed, appealed, and decided in accordance with this regulation as to procedures occurring after that date. All such petitions filed prior to January 1, 2003 and denied by Board Management must <u>have</u> perfected any access they may have <u>had</u> to a Board Member hearing no later than 60 days after <u>September 10, 2008</u>, the operative date of this regulation.</p> <p><u>(3) The amendments to this regulation adopted by the Board on or about [insert adoption date] have no retroactive effect.</u></p>
<p>1807(g)</p> <p>Alt 3.1 requires new sub-division (g)(3) of current 1807</p>			<p>Regulation 1807. PETITIONS FOR REALLOCATION OF LOCAL TAX.</p> <p>(g) OPERATIVE DATE AND TRANSITION RULES.</p> <p><u>(3) This Regulation 1807 ceases to be operative on the operative date of Regulation 1807.1.</u></p>	

Issue Paper Number **11-004**



- ☐ Board Meeting
- ☒ Business Taxes Committee
- ☐ Customer Services and Administrative Efficiency Committee
- ☐ Legislative Committee
- ☐ Property Tax Committee
- ☐ Other

Petitions for the reallocation of local and district taxes

I. Issue

Should the process for handling local and district tax petitions be changed, including amending Regulations 1807, *Petitions for Reallocation of Local Tax*, and 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax*?

II. Alternative 1 - Staff Recommendation

Amend Regulations 1807 and 1828 as recommended by staff. The full text of the revised regulations under this alternative is attached as Exhibit 3. The proposed amendments:

1. Explain that a 30-day extension can be requested when a jurisdiction is responding to a notice from the Local Revenue Allocation Unit (LRAU),
2. Add a provision in the supplemental decision process to allow the petitioner or notified jurisdiction to request that the Allocation Group (AG) issue its supplemental decision within 90 days,
3. Provide that the AG will transfer a petition file to the Appeals Division within 30 days of receiving an objection to the AG's supplemental decision,
4. Provide that potentially affected jurisdictions will be notified at the Appeals Division level, rather than the current practice of notification only at the Board hearing level, and
5. Clarify that participants are allowed 30 days to provide additional information following the appeals conference, and allow the other participants 30 days to respond to that information.

Staff recommends these revisions have a prospective application following the effective date of the amended regulations.

III. Other Alternatives Considered

Alternative 2

Amend Regulations 1807 and 1828 as suggested by Mr. Johan Klehs and supported by the HdL Companies. The full text of the revised regulations under this alternative is attached as Exhibit 4. In addition to the regulatory revisions proposed by staff in items 1, 3, 4 and 5 in Alternative 1, Mr. Klehs and the HdL Companies recommend further amendments to Regulations 1807 and 1828 to include the following (see submissions, Exhibits 6 and 7):

1. Add a 90-day time limit for the AG to issue a supplemental decision.

2. Require that the notice of the appeals conference be sent within six months of the Appeals Division receiving the file from the AG.
3. Establish a 60-day time limit for the AG to issue a second supplemental decision in situations where the AG has continued to work with the petitioner or notified jurisdiction after the file was sent to the Appeals Division. If an objection to the supplemental decision is filed, then the notice of the appeals conference should be sent within 90 days.
4. Reduce the request for an extension of time to prepare the Decision and Recommendation (D&R) from 90 days to 30 days.
5. Eliminate the Request for Reconsideration (RFR) and Supplemental Decision and Recommendation (SD&R) processes.
6. Require that the Board Hearing notice be issued within 90 days of the request for hearing.

Alternatives 3.1 and 3.2

Amend Regulations 1807 and 1828 as recommended by MuniServices. MuniServices believes their revisions should have a prospective application and offers the Board two options to achieve this:

Alternative 3.1 - Replace current Regulations 1807 and 1828 with new Regulations 1807.1 and 1828.1, or

Alternative 3.2 - Add language stating that the amendments adopted by the Board on the adoption date have no retroactive effect.

The full text of the revised regulations under these alternatives, including an explanation for the proposed 3.1 and 3.2 alternatives, is attached as Exhibit 5. MuniServices' recommended procedural changes are the same for both Alternative 3.1 and 3.2. In addition to the regulatory revisions proposed by staff in items 1, 3, 4 and 5 in Alternative 1, MuniServices recommends the following additional amendments (see submission, Exhibit 8):

1. Add a process that allows the AG 270 days to conduct its initial investigation and issue a decision. If no decision has been issued at the end of the 270 day period, the AG and the petitioner will meet and confer, within 30 days, on the scope and timeline of further investigations, if any, according to rules to be promulgated in the Compliance Policy and Procedures Manual (CPPM).
2. Add a similar process at the AG supplemental decision level where the AG has 90 days to conduct its supplemental investigation of the petition. At the end of that 90-day period, the AG and petitioner will meet and confer on the scope and timeline of further investigations, if any, according to rules to be promulgated in the CPPM.
3. Limit the acceptance of post appeals conference submissions to 30 days to provide submissions and 30 days to respond to those submissions, unless additional time is agreed upon by all participants.
4. Add a process that requires the Board Members to rule on the admissibility of information provided at the Board Hearing level, when new factual information is provided at the hearing level.

IV. Background

Regulation 1807 provides the process for reviewing requests by jurisdictions for investigation of suspected misallocation of local taxes imposed under the Bradley-Burns Uniform Local Sales and Use Tax Law. The similar process for reviewing distributions of taxes imposed under the Transactions and Use Tax Law (commonly called “district taxes”) is provided in Regulation 1828. These regulations were substantially revised in 2008 to streamline the appeals processes. Currently, the local and district tax appeals processes involve review by the AG, the Appeals Division, and Board Members.

In addition to Regulations 1807 and 1828, CPPM Chapter 9, *Miscellaneous*, and publication 28, *Tax Information for City and County Officials*, contain further information regarding the administration of local and district taxes.

At the September 15, 2010, Business Taxes Committee meeting, Mr. Klehs presented the Committee with his suggestions for improving the local tax appeals process and the issue was referred to the interested parties process for further review and discussion. Staff met with interested parties on January 6, 2011, and February 17, 2011, to discuss the proposed changes including revisions to both Regulations 1807 and 1828 and the BOE procedure manuals. The issue is scheduled for discussion at the April 26, 2011, meeting of the Business Taxes Committee.

V. Discussion

Timeliness

Many of the recommended regulation revisions address the length of time it takes to process a local tax appeal to final administrative resolution. Exhibit 2 provides an overview illustrating how local tax petitions are processed at the AG, Appeals Division, and Board Member levels. The exhibit also notes the main revisions proposed by staff and interested parties.

Allocation Group Level. The current AG process provides that if the AG does not issue its initial decision within 6 months, the petitioner may request that the AG issue a decision and the AG will issue its decision within 90 days of the request. Staff recommends a similar provision be added to the AG supplemental decision phase allowing the petitioner or notified jurisdiction to request that the AG issue its supplemental decision. The combination of these “trigger” provisions allows the petitioner, at its option, to define the timeframe of the AG review if the petitioner or notified jurisdiction believes the process is taking too long.

Interested parties propose different ways to address this issue. Mr. Klehs and the HdL Companies recommend adding a 90-day time limit for the AG to issue a supplemental decision. MuniServices proposes a new approach that replaces the trigger provisions with a process that allows the AG 270 days to conduct its initial investigation and issue a decision. If no decision has been issued at the end of the 270 day period, the AG and the petitioner will meet and confer, within 30 days, on the scope and timeline of further investigations, if any, according to rules to be promulgated in the CPPM. MuniServices proposes a similar process at the AG supplemental decision level where the AG has 90 days to conduct its supplemental investigation of the petition. At the end of that 90-day period, the AG and petitioner will meet and confer on the scope and timeline of further investigations, if any, according to rules to be promulgated in the CPPM. At any time after the meet and confer, the petitioner may request that the AG issue its supplemental decision within 30 days of receiving such a request.

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Staff disagrees with Mr. Kleh's proposal to include a 90-day time deadline for the AG to issue a supplemental decision. We reiterate our concerns that to meet the deadline, staff will not always have enough time to investigate the new facts and arguments that are frequently presented as the basis for objecting to the AG's previous decision. Limitations on staff's ability to fully investigate new facts and arguments would likely result in more denied petitions and more objections to those denials. Staff believes that its amendments adding the optional trigger at the AG supplemental decision level address concerns that the current AG process time is effectively unlimited.

Staff also does not support the new meet-and-confer process suggested by MuniServices. While the 270-day timeframe suggested for the first AG decision is not an unreasonable amount of time to investigate most petitions, we note that it is similar to the timeframe currently provided if the petitioner utilizes the trigger provisions in subdivision (b)(3). That is, after 6 months (180 days) the petitioner can request AG to issue their decision in 90 days ($180+90 = 270$). At the AG supplemental decision step, we have the same concerns with the proposed 90-day as we noted with Mr. Kleh's recommendation.

With regard to the meeting requirement included in MuniServices proposal, the AG is open to meeting with jurisdictions and their representatives regarding specific cases. In fact, the AG encourages jurisdictions to continue their investigations after petitions are submitted and to provide the results of those investigations to staff for verification as soon as possible during the process. However, staff believes that a meet-and-confer meeting and the timeline for such a meeting should not be mandated by regulation. Including a meeting requirement into the regulation imposes a mandatory process on all jurisdictions without considering whether those other jurisdictions have interest in a meet-and-confer process. Instead of adding a new process into the regulation, staff recommends retaining the current regulation structure with the addition of the trigger at the AG supplemental decision step.

Staff believes the efficiency of the current AG process can be improved by working with jurisdictions to improve the completeness of petitions when they are submitted. As explained in staff's second discussion paper, the completeness of information and records provided by the petitioner can affect how quickly the assertions in the petition are verified. Last year the AG received an average of over 500 petitions a month and cleared about the same number¹. Staff believes it can improve this clearance rate by improving the quality of petitions when they are submitted, which will allow the AG to speed up its review and verification, and more readily identify issues that require further investigation.

For example, in the past, many petitions submitted by jurisdictions consisted only of a general statement that the taxpayer has a sales office. Staff intends to review the AG questionnaire used to file local tax petitions and revise the form as needed to make it clear what information is needed from the petitioner to meet the requirements of Regulation 1807(a)(3), which defines a "petition." The goal is to ensure that the form will assist the petitioner to include in the petition specific information required by Regulation 1807(a)(3), and other information so that the AG can better understand the circumstances of a case. The form will also indicate that the petitioning jurisdiction should provide any documentation obtained to support the petition at the time the petition is filed, and encourage the jurisdiction to provide more details of its investigation and results, such as the exact questions asked of the taxpayer and the taxpayer's responses. To streamline the AG's investigation process, staff is also evaluating our processes for reviewing petitions as they come in so that incomplete petitions are quickly returned to the petitioner for the petitioner to complete and resubmit.

In addition to regulatory changes to the regulations, MuniServices recommended several procedural changes with regard to how petitions are investigated by the AG and field audit staff (Exhibit 8, pages 4

¹ The AG received 6,651 petitions in FY 09/10 ($6,651 \div 12 = 554$). The AG cleared 6,311 petitions in FY 09/10 ($6,311 \div 12 = 526$).

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and 5). Staff has noted these recommendations and will consider them in future revisions to the various affected procedure manuals.

Appeals Division Level. Staff and interested parties agree with the idea of bringing potentially affected jurisdictions into the appeals process starting at the Appeals Division level. Accordingly, staff and interested parties propose that subdivision (c)(2) be revised to require that notice of an appeals conference be mailed to the petitioner, all notified jurisdictions, and any other jurisdiction that would be substantially affected if the petition were granted.

Staff and interested parties also agree to amend subdivision (c)(3) to clarify that appeals conference participants have 30 days after the conference to provide additional information, and that the other participants have 30 days to respond to the information provided. Staff does not recommend any further revisions to subdivision (c) to limit the acceptance of post-conference submissions. However, MuniServices further recommends that the Appeals Division not accept argument or evidence beyond these 30-day deadlines, except upon agreement of all participants.

Mr. Klehs and the HdL Companies also recommend the following deadlines be included in the regulations to establish a definitive timeframe for the Appeals Division process:

- Require that the notice of the appeals conference be sent within six months of the Appeals Division receiving the file from the AG. Currently, there is no deadline; participants are notified at least 45 days before the conference.
- Establish a 60-day time limit for the AG to issue a second supplemental decision in situations where the AG has continued to work with the petitioner or notified jurisdiction after the file was sent to the Appeals Division. If an objection to the supplemental decision is filed, then the notice of the appeals conference should be sent within 90 days.
- Reduce the request for an extension of time to prepare the D&R from 90 days to 30 days.
- Eliminate the RFR and SD&R processes.

Staff does not recommend these additional revisions as we do not believe they will result in the most productive review and handling of cases. Keeping in mind that the purpose of the petition process is to ensure that the tax is correctly allocated, staff has a responsibility to all jurisdictions to only reallocate the reported tax when a preponderance of evidence shows that there was a misallocation. As at the AG level, we are concerned that to meet a deadline, the Appeals Division may not have enough time to obtain all necessary information or analysis from the parties in order to perform a complete and accurate analysis in its D&R. This is also a concern with the suggestion to limit post-appeals conference submissions. The Appeals Division's overall objective is to base its D&R on all available information and arguments. While it is not the primary responsibility of the Appeals Division to perform an investigation, as a practical matter, new facts and arguments frequently emerge during the course of preparing for the appeals conference and during the conference itself. This is even more likely to happen if potentially affected jurisdictions are brought into the process for the first time at the appeals conference. Limiting the time for the Appeals Division to review information, or limiting the acceptance of information upon agreement of the parties could result in the issuance of less comprehensive D&Rs and more decisions being appealed to the Board Member level with facts and arguments being presented for the first time at Board hearing. Again, the purpose of the process is to fully vet issues and possibly resolve them without having to move on to the next step of the appeals process.

Staff also does not recommend eliminating the RFR and SD&R processes. The RFR process allows for any new issue to be addressed in a SD&R before the case moves forward to Board hearing, or the

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decision in the SD&R may resolve the issue so that the appeal does not need to move forward to Board hearing. In addition, the request for a SD&R occasionally comes from Board Members requesting clarification to a D&R. Finally, staff disagrees with eliminating these processes because such action would be inconsistent with the Board's Rules for Tax Appeals, Regulation 5266, *Appeals Staff Recommendations; Request for Reconsideration; Requests for Oral Hearings*.

Staff notes that while the timeframes for several of the steps are open-ended at the Appeals Division level, they are already more restrictive than the appeals process for general sales and use tax audits and claims for refund. The Rules for Tax Appeals Regulation 5265, *Issuance and Contents of a Decision and Recommendation*, allows the Chief Counsel to grant further extensions of time for staff to prepare the D&R and Regulation 5261, *Notice of Appeals Conference: Response to Notice of Appeals Conference; Submission of Additional Arguments and Evidence; Recording Appeals Conferences*, does not require that an appeals conference be scheduled within any particular timeframe. Considering that most local tax petitions are resolved at the AG level, it is fair to say that the typical petition that reaches the Appeals Division involves complicated issues that are often more difficult to analyze than the issues in most other local tax petitions (or in general sales and use tax cases). Staff does not believe it would be prudent to impose additional time restrictions for analyzing these complex cases, or shorten the length of time allowed for the Appeals Division to prepare the D&R.

Staff further notes that the proposed additional time limits do not take into account delays in setting conferences that could result from proposed amendments to local tax regulations being sent to the Business Taxes Committee such as were experienced when Regulation 1802 was amended to address the warehouse rule², or spikes in inventory volume such as when a large number of petitions were simultaneously sent to the Appeals Division (e.g., the Mass Appeals cases³). The time limits also do not take into account delays in setting conferences that result from coordinating dates with various participating jurisdictions and any requests by jurisdictions to reschedule or postpone an appeals conference.

Staff is unaware of any problems with setting appeals conferences as the Appeals Division has pending only four cases ready to set for conference, or of any problems with the Appeals Division issuing its D&Rs. As noted in staff's discussion papers, since September 2008, the Appeals Division has closed 1,327 petitions (involving 520 taxpayers), including 99.6% of the Mass Appeals cases. Since the last interested parties meeting, another 22 petitions (involving 2 taxpayers) were closed.

Board Member Level. Currently, Regulations 1807 and 1828 provide that when petitioners or notified jurisdictions request a Board hearing, the request must state the basis for the jurisdiction's disagreement with the D&R or SD&R, as applicable, and include all additional information in its possession that supports its petition. When the Board Proceedings Division receives a timely request for hearing, it sends the proper hearing notification at least 75 days before the hearing.

Mr. Klehs and the HdL Companies propose amendments that would require the notice of hearing be issued within 90 days of the request for hearing. MuniServices does not recommend adding this deadline, however, if new factual information is included with the request for Board Hearing, MuniServices

² The "warehouse rule" provides for direct distribution of local sales tax revenue to the jurisdiction where the retailer's stock of tangible personal property is located (warehouse), in cases where the retailer has sales offices in this state but the sale is negotiated out of state with no participation by the instate sales office, and fulfilled by the retailer's employees from the retailer's in-state stock of goods.

³ The "Mass Appeals" cases refer to a large group of cases filed by MuniServices, LLC, which involve similar facts and arguments and have been processed by the Appeals Division in groups.

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proposes amendments that require the requester to justify why that information was not provided at or before the appeals conference. MuniServices further proposes that Board Members rule on the admissibility of that additional information no later than 75 days before the date the hearing is set, and that the Board will promulgate policies regarding the scheduling of these admissibility hearings.

Staff is not aware of any significant delays in scheduling local tax appeal cases for Board hearing and does not recommend any regulatory changes to subdivision (d). Requiring that the Board hearing notice be sent within 90 days of receiving the request for hearing would also be inconsistent with the rules for other Sales and Use Tax appeals provided in the Rules for Tax Appeals. The requirement would also limit the Board's ability to schedule these cases with consideration of the Board's workload. Staff also does not believe it is necessary to implement new, undeveloped processes at the Board hearing level to address evidence presented in local tax cases. The rules for presenting evidence at Board hearings are already provided in Rules for Tax Appeals Regulation 5523.6, *Presentation of Evidence or Exhibits*.

Prospective Application

As with the 2008 revisions to Regulations 1807 and 1828, staff believes the current proposed amendments should apply prospectively. Accordingly, staff has revised subdivisions 1807(g) and 1828(f), "Operative Date and Transition Rules," to explain that the 2008 revisions and any future amendments to the regulations have no retroactive effect.

The need to revise the operative date references was suggested by BOE staff during the preparation of this issue paper. Staff emailed the proposed revisions to Mr. Klehs, the HdL Companies, and MuniServices on April 4, 2011 for their information, and noted that the language could be added to the interested parties' submissions if they wished. Staff did not receive a response from Mr. Klehs or the HdL Companies. However, MuniServices responded that they agreed that the proposed amendments should apply prospectively, but expressed concerns with staff's proposed language. To make the proposed revisions prospective, MuniServices proposes two options: Alternative 3.1 - replace current Regulations 1807 and 1828 with new Regulations 1807.1 and 1828.1, or Alternative 3.2 - add language stating that the amendments adopted by the Board on the adoption date have no retroactive effect.

Holding Local Tax Distributions in Suspense

One significant issue discussed during this interested parties process was the holding of local tax distributions in suspense while a suspected misallocation is being investigated. In his response to staff's initial discussion paper, Mr. Robert Cendejas submitted comments disagreeing with the proposal to place disputed local tax monies in trust until the BOE local tax appeals process is exhausted, noting the hardships cities would face if distributions were tied up for routine disputes. Mr. Cendejas also expressed his belief that only the Board Members themselves should be able to take such steps and only after a public hearing allowing the affected city to show why such action is unnecessary. In his response to the initial discussion paper, Mr. Joseph Vinatieri stated his view that staff's failure to make distributions is illegal, and that if funds are to be withheld, there should be legislative authorization to do so. MuniServices explained that they object to the suggestion that monies be withheld; they believe that control over monies should be a local matter subject to local control (Exhibit 8).

Mr. Klehs' final submission (Exhibit 6) did not include his earlier recommendation that Regulation 1807 be revised to require that any disputed local tax monies be placed in trust until the BOE local tax appeals process is exhausted. However, the HdL Companies reiterated their belief that Board staff could develop criteria for determining when distributions could be held. They suggest that, "... distributions should be held in suspense only if the amount involved is above a certain threshold such that reallocation would

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create a substantial hardship for the losing jurisdiction, and only if/when there have been at least two adverse decisions against said jurisdiction. ..." (Exhibit 7).

After review of the submissions and discussions of the issue, staff does not recommend revisions to Regulation 1807 or to BOE procedure manuals to describe when distributions of local tax may be held in suspense. BOE has only held distributions in the past when staff believed the uniqueness of the situation warranted such action. This action has so rarely been taken that we do not believe that such procedures are necessary or that we could draft general rules that would provide useful guidance for future situations. We think staff must evaluate the facts and circumstances surrounding each case to determine if it is necessary to hold local tax distributions. Staff also does not believe it is necessary to adopt formal procedures for jurisdictions to request the Board hold distributions in a particular case. As with any other concerns regarding Sales and Use Tax matters, if a jurisdiction believes a situation warrants BOE evaluation, the jurisdiction is welcome to contact their Member, the BOE Executive Director, or the Sales and Use Tax Deputy Director and share those concerns.

With regard to Mr. Klehs' earlier suggestion that BOE sponsor legislation to pay interest to the winning jurisdiction in an allocation case on any held monies when a final decision has been made, staff would need direction from the Board Members to pursue legislation. If the Board Members made such a recommendation, staff notes that when BOE has held distributions, the funds have been placed in the local tax pooled money investment account. If legislation were passed to allow the appropriate jurisdiction to earn interest on held distributions, interest could be calculated based on the proportionate percentage of the total interest earned on the pooled money investment account.

Disclosure of Revenue Sharing Agreements

Another key issue has been whether taxpayers should be required to disclose the existence and terms of any revenue sharing agreements involving local tax distributions. In prior submissions, Mr. Vinatieri expressed his belief that the disclosure of the terms of a revenue sharing agreement is irrelevant to the determination of whether a petition for reallocation is with or without basis. Mr. Cendejas agreed that regulatory change was not needed and explained that such agreements can be obtained under the Public Records Act or by the BOE's current procedures for obtaining records from taxpayers.

Mr. Klehs and the HdL Companies explained that where a revenue sharing agreement exists, it is an important component of the overall picture and helps ensure that the Board performs a thorough investigation. In their March 1, 2011 submission (Exhibit 7), HdL states their belief that the presence of a sharing agreement does not necessarily or automatically discredit the testimony of any party to the agreement. However, taxpayers should be required to disclose sharing agreements because, "...Board investigations of local tax cases have traditionally relied completely and solely upon information provided by the taxpayer. The taxpayer is in complete control of what information is released, and even who within the company is authorized or qualified to speak to the Board. When and where a rebate agreement exists the taxpayer has a clear, obvious and often substantial financial interest in the outcome of the local tax matter before the Board. ..."

Staff agrees with Mr. Klehs and the HdL Companies that it is important for staff to have a complete and accurate understanding of a taxpayer's business activities, and that the existence and terms of an agreement can be important information when staff is investigating a suspected misallocation of local tax. Further, taxpayers should provide such agreements to staff upon request. Staff should be aware of what sharing agreements are, the different types of agreements that staff has encountered, where record of agreements can be found, and how such an agreement should be viewed in light of the entire

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investigation. Staff and interested parties currently agree that this issue should be addressed in the BOE procedure manuals instead of Regulations 1807 and 1828.

Proposed revisions to BOE procedure manuals

During the interested parties process staff and interested parties noted several items that do not require Board approval for a regulatory change; rather they are more appropriate for inclusion, or discussion for inclusion, in the BOE procedure manuals. Thus, in addition to the proposed regulatory revisions, staff recommends that future revisions of the BOE procedural manuals include:

- A general ordering rule regarding the scheduling of appeals conferences,
- An explanation that participants will be notified when the final submission is received following the appeals conference, and
- A discussion of revenue sharing agreements, including an explanation of what agreements are, what types of agreements staff has encountered, where record of agreements can be found, and how such agreements should be viewed in light of the entire investigation.

As noted in the prior section, “Timeliness,” MuniServices recommends several procedural changes with regard to how petitions are investigated by the AG and field audit staff. Staff will consolidate our review of these proposed changes with other pending and ongoing revisions to local tax appeal procedures, and will share proposed non-confidential guidance with interested parties for their input. As with all policy and procedure material, the guidance will be incorporated into audit and compliance manuals that are presented to the Board for approval or for discussion if the Board wishes to consider unresolved items.

VI. Alternative 1 - Staff Recommendation

Staff recommends the Board approve and authorize publication of proposed amendments to Regulations 1807, *Petitions for Reallocation of Local Tax*, and 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax*, as proposed in Exhibit 3.

A. Description of Alternative 1

- Formalizes the LRAU’s existing policy to give jurisdictions a 30-day extension to respond to an LRAU notification regarding the misallocation of local or district tax. The regulations currently provide that a “petition” includes an appeal from a notification from the LRAU that taxes were misallocated and will be reallocated. Jurisdictions may object to that notification, submitting a written petition to the AG within 30 days of the date of mailing of the notification.
- Adds a provision in the AG supplemental decision process to allow the petitioner or notified jurisdiction/district to request after six months that the AG issue its supplemental decision within 90 days from receiving the request, with the requester understanding the limitations it may be placing on the AG’s investigation and analysis. This provision would be similar to the mechanism currently in subdivision (b)(3) with regard to the AG’s initial decision.
- Provides that the AG will transfer a petition file to the Appeals Division within 30 days of receiving an objection to the AG’s supplemental decision.
- Requires that the notice of an appeals conference be mailed to the petitioner, all notified jurisdictions/districts, and any other jurisdiction/districts that would be substantially affected if the petition were granted. Currently, if a petition is denied by the AG and the Appeals Division, a potentially affected jurisdiction/district will not be notified until the matter is scheduled for a Board hearing.

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- Allows participants 30 days to provide additional information following the appeals conference, and allows the other participants 30 days to respond to that information. The current regulation provides participants up to 30 days to provide additional information and gives 15 for other participants to respond.
- Clarifies in subdivisions 1807(g) and 1828(f), “Operative Date and Transition Rules,” that the proposed amendments have a prospective application. The current language in these subdivisions is specific to the 2008 revision of the regulations.

B. Pros of Alternative 1

- By formalizing the LRAU extension procedure, jurisdictions/districts avoid the issue of petitions technically filed late with the AG because the LRAU allowed additional time and the petition was filed after the 30-day deadline.
- Provides the petitioner or notified jurisdiction/district a method to control the timeline of the AG review process by allowing the petitioner or notified jurisdiction/district to request that the AG issue its supplemental decision within 90 days of receiving a request to issue a supplemental decision.
- Formalizes the current procedure of transferring files from the AG to the Appeals Division within 30 days.
- Brings potentially affected jurisdictions/districts into the appeals process starting at the Appeals Division level rather than the current Board Hearing level. By notifying more jurisdictions/districts at an earlier level, staff believes issues can be more fully discussed and possibly resolved before the Board hearing.
- Clarifies and makes consistent the time allowed to each party to submit and respond to information provided after the appeals conference.
- Allows adequate time for staff to fulfill its responsibility to all jurisdictions affected by its decision whether or not to reallocate reported local or district tax.
- As with the 2008 revisions, the current proposed revisions would be applied prospectively.

C. Cons of Alternative 1

- Does not limit the local tax appeals process to a timeframe for completion.
- Does not prohibit participants from submitting additional responses after the specified period for post-appeals conference submissions.

D. Statutory or Regulatory Change for Alternative 1

No statutory change is required. However, staff’s recommendation does require adoption of regulation amendments.

E. Operational Impact of Alternative 1

CPPM Chapter 9, *Miscellaneous*, and publication 28, *Tax Information for City and County Officials*, will need to be revised to incorporate the regulation revisions.

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F. Administrative Impact of Alternative 1**1. Cost Impact**

The workload associated with publishing the regulations and revising the CPPM and publication 28. Any corresponding cost would be absorbed within the BOE's existing budget.

2. Revenue Impact

None. See Revenue Estimate (Exhibit 1).

G. Taxpayer/Customer Impact of Alternative 1

Staff believes the overall impact of its proposed amendments to taxpayers and jurisdictions is minimal.

H. Critical Time Frames of Alternative 1

Implementation will begin 30 days following approval of the amended regulations by the State Office of Administrative Law.

VII. Alternative 2

Approve and authorize publication of proposed amendments to Regulations 1807 and 1828 as proposed by Mr. Johan Klehs and supported by the HdL Companies. Proposed amendments are shown in Exhibit 4.

A. Description of Alternative 2

- Explains that a 30-day extension can be requested when a jurisdiction is responding to a notice from the LRAU.
- Adds a 90-day time limit for the AG to issue a supplemental decision.
- Provides that the AG will transfer a petition file to the Appeals Division within 30 days of receiving an objection to the AG's supplemental decision.
- Notifies potentially affected jurisdictions starting at the Appeals Division level, rather than only at the current Board Hearing level.
- Requires that the notice of the appeals conference be sent within six months of the Appeals Division receiving the file from the AG.
- Establishes a 60-day time limit for the AG to issue a second supplemental decision in situations where the AG has continued to work with the petitioner or notified jurisdiction after the file was sent to the Appeals Division. If an objection to the supplemental decision is filed, then the notice of the appeals conference should be sent within 90 days.
- Reduces the request for an extension of time to prepare the D&R from 90 days to 30 days.
- Eliminates the RFR and SD&R processes.
- Requires that the Board Hearing notice be issued within 90 days of the request for hearing.

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B. Pros of Alternative 2

- Including the LRAU extension procedure solves the issue of petitions technically filed late with the AG because the LRAU allowed the petitioner additional time.
- Brings potentially affected jurisdictions/districts into the appeals process at the Appeals Division level rather than the current Board Hearing level.
- Provides definitive timeframes at each level of the petition process by adding deadlines, reducing extensions, and eliminating processes. Under the proposed alternative, petitions likely would be sent to Board hearing within three years, assuming the petition was appealed to the Board Member level of review.

C. Cons of Alternative 2

- The addition of more deadlines could result in more denied petitions, and more objections to those denials, if staff does not have time to investigate and determine that a misallocation has occurred. That is, more cases may move forward in the appeals process that could have been resolved at an earlier level in the process.
- Eliminating the RFR and SD&R process and setting a deadline for scheduling the Board hearing are inconsistent with the rules for other sales and use tax appeals as provided in the Rules for Tax Appeals.
- May reduce the accuracy of reallocation decision for the sake of expediency.

D. Statutory or Regulatory Change for Alternative 2

No statutory change is required. However, Alternative 2 does require adoption of regulation amendments.

E. Operational Impact of Alternative 2

CPPM Chapter 9, *Miscellaneous*, and publication 28, *Tax Information for City and County Officials*, will need to be revised to incorporate the regulation revisions.

F. Administrative Impact of Alternative 2

1. Cost Impact

The workload associated with publishing the regulations and revising the CPPM and publication 28. Any corresponding cost would be absorbed within the BOE's existing budget.

2. Revenue Impact

None. See Revenue Estimate (Exhibit 1).

G. Taxpayer/Customer Impact of Alternative 2

The overall impact of the proposed amendments to taxpayers and jurisdictions is minimal.

H. Critical Time Frames of Alternative 2

Implementation will begin 30 days following approval of the amended regulations by the State Office of Administrative Law. If the Board were to approve Alternative 2, staff recommends adding language to subdivision 1807(g) and 1828(f) explaining that the amendments to subdivisions (c) and (d) are operative for petitions forwarded to the Appeals Division after the effective date of these amendments.

VIII. Alternatives 3.1 and 3.2

Approve and authorize publication of amendments as proposed by MuniServices in Alternative 3.1 or as proposed in Alternative 3.2. Proposed amendments are shown in Exhibit 5.

A. Description of Alternatives 3.1 and 3.2

- Explains that a 30-day extension can be requested when a jurisdiction is responding to a notice from the LRAU.
- Adds a process that allows the AG 270 days to conduct its initial investigation and issue a decision. If no decision has been issued at the end of the 270 day period, the AG and the petitioner will meet and confer, within 30 days, on the scope and timeline of further investigations, if any, according to rules to be promulgated in the CPPM.
- Adds a similar process at the AG supplemental decision level where the AG has 90 days to conduct its supplemental investigation of the petition. At the end of that 90-day period, the AG and petitioner will meet and confer on the scope and timeline of further investigations, if any, according to rules to be promulgated in the CPPM.
- Provides that the AG will transfer a petition file to the Appeals Division within 30 days of receiving an objection to the AG's supplemental decision.
- Notifies potentially affected jurisdictions starting at the Appeals Division level, rather than only at the current Board Hearing level.
- Limits the acceptance of post appeals conference submissions to 30 days to provide submissions and 30 days to respond to those submissions, unless additional time is agreed upon by all participants.
- Adds a process that requires the Board Members to rule on the admissibility of information provided at the Board Hearing level, when new factual information is provided at the hearing level.
- **Alternative 3.1** – To make the proposed amendments prospective, Alternative 3.1 incorporates their proposed amendments into new Regulations 1807.1 and 1828.1, and amends current Regulations 1807 and 1828 to provide that the regulations cease to be operative on the operative date of Regulations 1807.1 and 1828.1.
- **Alternative 3.2** – To make the proposed amendments prospective, Alternative 3.2 adds language stating that the amendments adopted by the Board on the adoption date have no retroactive effect.

B. Pros of Alternatives 3.1 and 3.2

- Including the LRAU extension procedure solves the issue of petitions technically filed late with the AG because the LRAU allowed the petitioner additional time.

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- Provides defined investigation timelines at the AG level as well as meeting processes between staff and jurisdictions to resolve issues with investigations.
- Brings potentially affected jurisdictions/districts into the appeals process starting at the Appeals Division level rather than the current Board hearing level.
- Limits post-appeals conference submissions and requires petitioners to justify why new factual information submitted with their hearing request was not presented at the appeals conference.

C. Cons of Alternatives 3.1 and 3.2

- Imposes a meet-and-confer process on all jurisdictions if the AG has not issued its initial decision in 270 days or its supplemental decision in 90 days.
- Adds a new, unspecified process for Board Members to rule on the admissibility of new factual information provided at the Board Hearing level.
- **Alternative 3.1** - Staff does not believe it is necessary to replace current Regulations 1807 and 1828 in order to make the proposed amendments prospective.
- **Alternative 3.2** – The language proposed in subdivision 1807(g)(3) and 1828 (f)(3) does not address future revisions to the regulations. New subdivisions with similar provisions would need to be added each time the regulations were amended.

D. Statutory or Regulatory Change for Alternatives 3.1 and 3.2

No statutory change is required. However, Alternative 3.1 does require adoption of regulation amendments and the adoption of new regulations. Alternative 3.2 requires adoption of regulation amendments.

E. Operational Impact of Alternative 3.1 and 3.2

CPPM Chapter 9, *Miscellaneous*, and publication 28, *Tax Information for City and County Officials*, will need to be revised to incorporate the regulation revisions.

F. Administrative Impact of Alternative 3.1 and 3.2**1. Cost Impact**

The workload associated with publishing the regulations and revising the CPPM and publication 28. Any corresponding cost would be absorbed within the BOE's existing budget.

2. Revenue Impact

None. See Revenue Estimate (Exhibit 1).

G. Taxpayer/Customer Impact of Alternative 3.1 and 3.2

The overall impact of the proposed amendments to taxpayers and jurisdictions is minimal.

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H. Critical Time Frames of Alternative 3.1 and 3.2

Implementation will begin 30 days following approval of the amended regulations by the State Office of Administrative Law.

Preparer/Reviewer Information

Prepared by: Tax Policy Division, Sales and Use Tax Department

Current as of: April 12, 2011

REVENUE ESTIMATE

STATE OF CALIFORNIA
BOARD OF EQUALIZATION



Petitions for the reallocation of local and district taxes

Alternative 1 – Staff Recommendation

Amend Regulations 1807 and 1828 as recommended by staff. The full text of the revised regulations under this alternative is attached as Exhibit 3. The proposed amendments prospectively:

1. Explain that a 30-day extension can be requested when a jurisdiction is responding to a notice from the Local Revenue Allocation Unit (LRAU),
2. Add a provision in the supplemental decision process to allow the petitioner or notified jurisdiction to request that the Allocation Group (AG) issue its supplemental decision within 90 days,
3. Provide that the AG will transfer a petition file to the Appeals Division within 30 days of receiving an objection to the AG's supplemental decision,
4. Provide that potentially affected jurisdictions will be notified at the Appeals Division level, rather than the current practice of notification only at the Board hearing level, and
5. Clarify that participants are allowed 30 days to provide additional information following the appeals conference, and allow the other participants 30 days to respond to that information.

Other Alternatives Considered

Alternative 2

Amend Regulations 1807 and 1828 as suggested by Mr. Johan Klehs and supported by the HdL Companies. The full text of the revised regulations under this alternative is attached as Exhibit 4. In addition to the regulatory revisions proposed by staff in items 1, 3, 4 and 5 in Alternative 1, Mr. Klehs and the HdL Companies recommend further amendments to Regulations 1807 and 1828 to include the following additional time limitations.

1. Add a 90-day time limit for the AG to issue a supplemental decision.
2. Require that the appeals conference be scheduled within six months of the Appeals Division receiving the file from the AG.

3. Establish a 60-day time limit for the AG to issue a second supplemental decision in situations where the AG has continued to work with the petitioner or notified jurisdiction after the file was sent to the Appeals Division. If an objection to the supplemental decision is filed, then an appeals conference should be scheduled within 90 days.
4. Reduce the request for an extension of time to prepare the Decision and Recommendation (D&R) from 90 days to 30 days.
5. Eliminate the Request for Reconsideration (RFR) and Supplemental Decision and Recommendation (SD&R) processes.
6. Require that the Board Hearing notice be issued within 90 days of the request for hearing.

Alternatives 3.1 and 3.2

Amend Regulations 1807 and 1828 as recommended by MuniServices. MuniServices believes their revisions should have a prospective application and offers the Board two options to achieve this: Alternative 3.1 – Replace current Regulations 1807 and 1828 with new Regulations 1807.1 and 1828.1, or Alternative 3.2 – Add language stating that the amendments adopted by the Board on the adoption date have no retroactive effect.

The full text of the revised regulations under this alternative is attached as Exhibit 5. MuniServices' recommended procedural changes are the same for both Alternatives 3.1 and 3.2. In addition to the regulatory revisions proposed by staff in items 1, 3, 4 and 5 in Alternative 1, MuniServices recommends the following additional amendments.

1. Add a process that allows the AG 270 days to conduct its initial investigation and issue a decision. If no decision has been issued at the end of the 270 day period, the AG and the petitioner will meet and confer, within 30 days, on the scope and timeline of further investigations, if any, according to rules to be promulgated in the Compliance Policy and Procedures Manual (CPPM).
2. Add a similar process at the AG supplemental decision level where the AG has 90 days to conduct its supplemental investigation of the petition. At the end of that 90-day period, the AG and petitioner will meet and confer on the scope and timeline of further investigations, if any, according to rules to be promulgated in the CPPM.
3. Limit the acceptance of post appeals conference submissions to 30 days to provide submissions and 30 days to respond to those submissions, unless additional time is agreed upon by all participants.
4. Add a process that requires the Board Members to rule on the admissibility of information provided at the Board Hearing level, when new factual information is provided at the hearing level.

Background, Methodology, and Assumptions

Alternative 1 – Staff Recommendation

There is nothing in staff recommendation that would impact local tax revenue. Staff recommendation are only a procedural change in the way local tax reallocation inquiries are processed and the timeliness in the way disputes resulting from any decision to reallocate local taxes are resolved. These procedural changes do not have any impact whatsoever on state and local sales and use tax revenue collections.

Alternative 2 – Mr. Johan Klehs with support of HdL Companies Recommendation

There is nothing in the Mr. Johan Klehs with support of HdL Companies recommendation that would impact local tax revenue. As with staff recommendation, the Mr. Johan Klehs recommendations are procedural changes in the way local tax reallocation inquiries are processed and the timeliness in the way disputes resulting from any decision to reallocate local taxes are resolved. These procedural changes do not have any impact whatsoever on state and local sales and use tax revenue collections.

Alternatives 3.1 and 3.2 – MuniServices Recommendation

There is nothing in MuniServices recommendations that would impact local tax revenue. As with staff recommendation and Mr. Johan Klehs, MuniServices recommendations are procedural changes in the way local tax reallocation inquiries are processed and the timeliness in the way disputes resulting from any decision to reallocate local taxes are resolved. These procedural changes do not have any impact whatsoever on state and local sales and use tax revenue collections.

Revenue Summary

Alternative 1 – staff recommendation does not have a revenue impact.

Alternative 2 – Mr. Johan Klehs with support of HdL Companies recommendation does not have a revenue impact.

Alternatives 3.1 and 3.2 – MuniServices recommendations do not have a revenue impact.

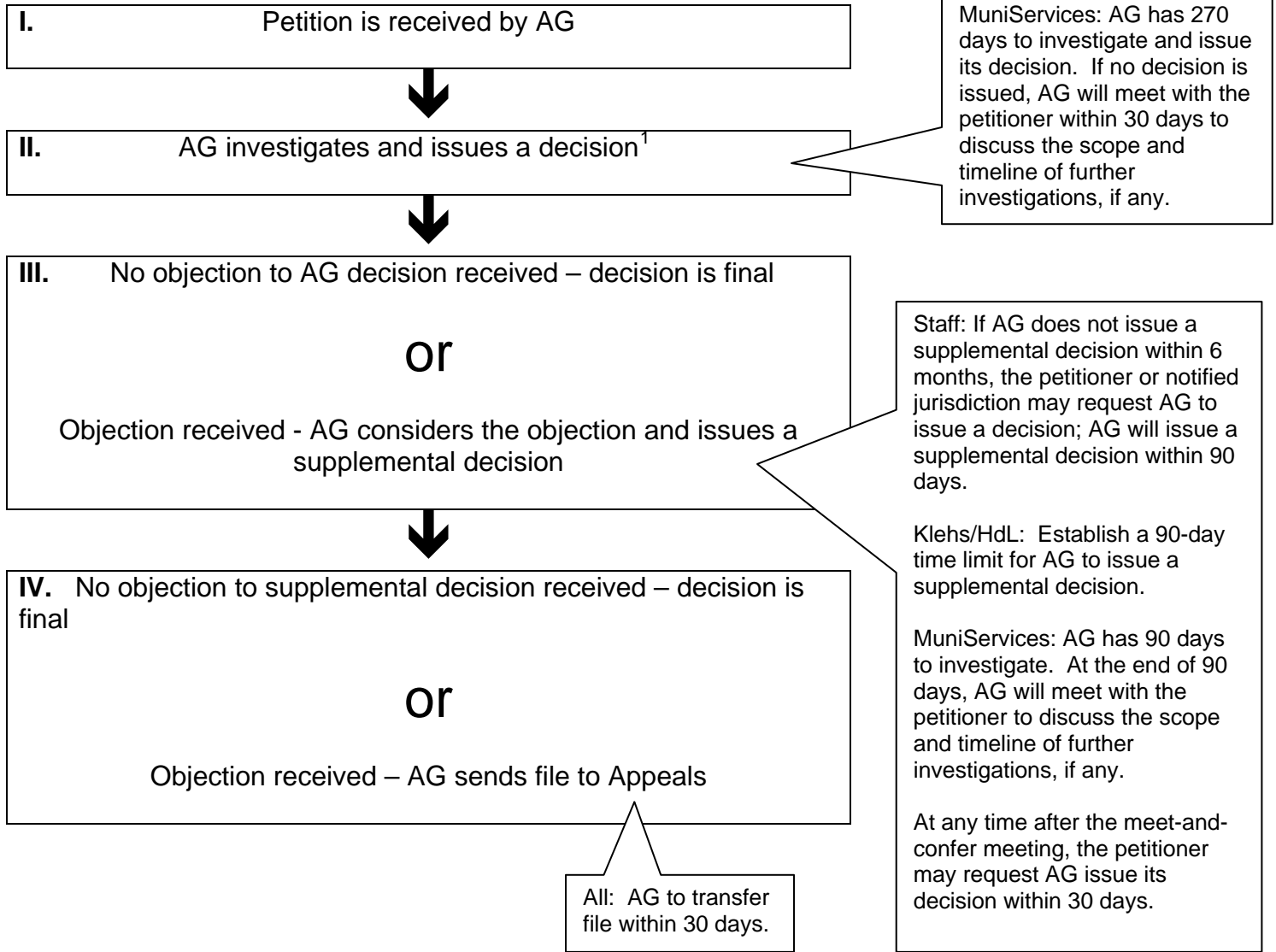
Preparation

Mr. Bill Benson, Jr., Research and Statistics Section, Legislative and Research Division, prepared this revenue estimate. Mr. Robert Ingenito, Chief, Research and Statistics Section, Legislative and Research Division, and Ms. Susanne Buehler, Tax Policy Manager, Sales and Use Tax Department, reviewed this revenue estimate. For additional information, please contact Mr. Benson at (916) 445-0840.

Current as of April 12, 2011.

This exhibit provides a general overview of the current local tax petition process. The callout boxes list the main suggested revisions to the process.

Allocation Group (AG) Level



¹ If AG does not issue a decision within 6 months, the petitioner may request AG to issue a decision; AG will issue a decision within 90 days of the request.

Appeals Division (Appeals) Level

V. The petitioner, notified jurisdictions, and SUTD will be notified of the appeals conference at least 45 days before the conference

All: On petitions that were denied by AG, notify jurisdictions that would be substantially affected if the petition were granted.



VI. Petitioner or notified jurisdiction may continue to investigate with AG and AG may issue a second supplemental decision

- If second supplemental decision issued and no objection is received – decision is final

Klehs and HdL: Require that the notice of the appeals conference be sent within 6 months of receiving file.

or

- If second supplemental decision issued and an objection is filed, Appeals will schedule an appeals conference

Klehs and HdL: Establish a 60-day time limit for AG to issue a second supplemental decision.

Klehs and HdL: If an objection is filed, require the notice of the appeals conference be sent within 90 days.



VII. Appeals conference held.

- Participants may request up to 30 days to submit additional documentation
- Other participants who disagree with the additional information presented are allowed 15 days to submit arguments or evidence in response

All: Allow participants 30 days to submit additional documentation; allow the other participants 30 days to respond.

MuniServices: Appeals will not accept argument or evidence beyond these 30-day deadlines, except upon agreement of all participants.



VIII. Within 90 days of the appeals conference or final submission of additional information, Appeals will issue the D&R; the Chief Counsel may approve an additional 90 days to prepare the D&R upon request by Appeals

Klehs and HdL: Shorten the extension request to 30 days.



IX. Petitioner, notified jurisdiction, or SUTD may also appeal any D&R or Supplemental D&R (SD&R) by submitting a timely written Request for Reconsideration (RFR) to Appeals.

- If an SD&R is issued, the petitioner or any notified jurisdiction may appeal the SD&R by submitting a written request for Board hearing within 60 days of the mailing date of the SD&R.

Klehs and HdL: Eliminate the RFR and SD&R process.



X. No request for Board hearing is timely received in response to a D&R or SD&R – Appeals decision is final

or

Request for Board hearing received in response to a D&R or SD&R

Board Hearing Level

XI. Request for Board hearing received



XII. Board Proceedings will send notification that a Board hearing is being scheduled to:

- SUTD,
- the petitioner,
- any notified jurisdiction,
- any other jurisdiction that would be substantially affected if the petition were granted, and
- the taxpayer(s) whose allocations are the subject of the petition

Notification of Board hearing is sent at least 75 days before the hearing.

MuniServices: If additional factual information is sent with Board hearing request, the request must also include justification of why that information was not provided at the Appeals conference.

Klehs and HdL: Require that the hearing notice be issued within 90 days of the request for hearing.

ALTERNATIVE 1:

Regulation 1807. PETITIONS FOR REALLOCATION OF LOCAL TAX.

(a) DEFINITIONS.

(1) LOCAL TAX. "Local tax" means a local sales and use tax adopted pursuant to Revenue and Taxation Code section 7200, et seq., and administered by the Board.

(2) JURISDICTION. "Jurisdiction" means any city, county, city and county, or redevelopment agency which has adopted a local tax.

(3) PETITION. "Petition" means a request or inquiry from a jurisdiction, other than a submission under Revenue and Taxation Code section 6066.3, for investigation of suspected misallocation of local tax submitted in writing to the Allocation Group of the Sales and Use Tax Department. The petition must contain sufficient factual data to support the probability that local tax has been erroneously allocated and distributed. Sufficient factual data should include, for each business location being questioned:

(A) Taxpayer name, including owner name and fictitious business name or dba (doing business as) designation.

(B) Taxpayer's permit number or a notation stating "No Permit Number."

(C) Complete business address of the taxpayer.

(D) Complete description of taxpayer's business activity or activities.

(E) Specific reasons and evidence why the taxpayer's allocation is questioned. If the petition alleges that a misallocation occurred because a sale location is unregistered, evidence that the questioned location is a selling location or that it is a place of business as defined by California Code of Regulations, title 18, section 1802. If the petition alleges that a misallocation occurred because the tax for a sale shipped from an out-of-state location was actually sales tax and not use tax, evidence that there was participation in the sale by an in-state office of the retailer and that title to the goods passed to the purchaser inside California.

(F) Name, title, and telephone number of the contact person.

(G) The tax reporting periods involved.

"Petition" also includes an appeal by a jurisdiction from a notification from the Local Revenue Allocation Unit of the Sales and Use Tax Department that local taxes previously allocated to it were misallocated and will be reallocated. Such a jurisdiction may object to that notification by submitting a written petition to the Allocation Group within 30 days of the date of mailing of the notification or within a period of extension described below. The petition must include a copy of the notification and specify the reason the jurisdiction disputes it. If a jurisdiction does not submit such a petition within 30 days of the date of mailing of the notification, or within a period of extension, the notification of the Local Revenue Allocation Unit is final as to the jurisdiction so notified.

The jurisdiction may request a 30-day extension to submit a written objection to a notification of misallocation from the Local Revenue Allocation Unit. Such request must provide a reasonable explanation for the requesting jurisdiction's inability to submit its objection within 30 days and must be received by the Local Revenue Allocation Unit within 30 days of the date of mailing of its notification. Within five days of receipt of the request, the Local Revenue Allocation Unit will mail notification to the jurisdiction whether the request is granted or denied. If a timely request for an extension is submitted, the time for the jurisdiction to file a written objection is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the jurisdiction to submit a written objection to the notification of the Local Revenue Allocation Unit is further extended to the 60th day after the date of mailing of the notification of misallocation.

(4) PETITIONER. "Petitioner" is a jurisdiction that has filed a valid petition pursuant to subdivision (a)(3).

(5) DATE OF KNOWLEDGE. Unless an earlier date is operationally documented by the Board, "date of knowledge" is the date on which the Allocation Group receives a valid petition. Where a misallocation that is reasonably covered by the petition is confirmed based on additional facts or evidence supplied by the petitioner or otherwise learned as a direct result of investigating the petition, the date of knowledge is the date on which the Allocation Group received the petition.

(6) SUBSTANTIALLY AFFECTED JURISDICTION. "Substantially affected jurisdiction" is a jurisdiction for which the decision on a petition would result in a decrease to its total allocation of 5 percent or more of its average quarterly

allocation (generally determined with reference to the prior four calendar quarters) or of \$50,000 or more, and includes a jurisdiction whose allocation will be decreased solely as the result of a reallocation from the statewide and applicable countywide pools.

(7) NOTIFIED JURISDICTION. "Notified jurisdiction" is a jurisdiction that has been notified as a substantially affected jurisdiction.

(b) REVIEW BY ALLOCATION GROUP.

(1) The Allocation Group will promptly acknowledge a submission intended as a petition.

(2) The Allocation Group will review the petition and issue to the petitioner a written decision to grant or deny the petition, including the basis for that decision. The written decision will also note the date of knowledge, and if other than the date the petition was received, will include the basis for that date. A reallocation will be made if the preponderance of evidence, whether provided by petitioner or obtained by Board staff as part of its investigation of the petition, shows that there was a misallocation. If the preponderance of evidence does not show that a misallocation occurred, the petition will be denied.

(3) If the Allocation Group does not issue a decision within six months of the date it receives a valid petition, the petitioner may request that the Allocation Group issue its decision without regard to the status of its investigation. Within 90 days of receiving such a request, the Allocation Group will issue its decision based on the information in its possession.

(4) If the decision of the Allocation Group is that the asserted misallocation did not occur and that the petition should be denied, in whole or in part, the petitioner may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(5) If the decision of the Allocation Group is that a misallocation did occur, it will also mail a copy of its decision to any substantially affected jurisdiction. Any such notified jurisdiction may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(6) The petitioner or any notified jurisdiction may appeal the decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's decision, or within a period of extension authorized by subdivision (b)(910). If no such timely objection is submitted, the decision of the Allocation Group is final as to the petitioner and all notified jurisdictions.

(7) If the petitioner or a notified jurisdiction submits a timely written objection to the decision of the Allocation Group, the Allocation Group will consider the objection and issue a written supplemental decision to grant or deny the objection, including the basis for that decision. A copy of the supplemental decision will be mailed to the petitioner, to any notified jurisdiction, and to any other jurisdiction that is substantially affected by the supplemental decision.

(8) If the Allocation Group does not issue a supplemental decision within six months of the date it receives a written timely objection to the decision of the Allocation Group, the petitioner or any notified jurisdiction may request that the Allocation Group issue its supplemental decision without regard to the status of its investigation. Within 90 days of receiving such a request, the Allocation Group will issue its supplemental decision based on the information in its possession.

(89) The petitioner or any notified jurisdiction may appeal the supplemental decision of the Allocation Group by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(910). If no such timely objection is submitted, the supplemental decision of the Allocation Group is final as to the petitioner and all notified jurisdictions.

(910) The petitioner or any notified jurisdiction may request a 30-day extension to submit a written objection under subdivision (b)(6) or under subdivision (b)(89), as applicable. Such request must provide a reasonable explanation for the requesting jurisdiction's inability to submit its objection within 30 days, must be copied to all other jurisdictions to whom the Allocation Group mailed a copy of its decision or supplemental decision (to the extent known by the requesting jurisdiction), and must be *received* by the Allocation Group within 30 days of the date of mailing of its decision or supplemental decision. Within five days of receipt of the request, the Allocation Group will mail notification to the petitioner and to all notified jurisdictions whether the request is granted or denied. If a timely request for an extension is submitted, the time for the petitioner and any notified jurisdiction to file a written objection to the decision or supplemental decision of the Allocation Group is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the petitioner and all notified jurisdictions to submit a written objection to the decision or supplemental decision of the Allocation Group is further extended to the 60th day after the date of mailing of the decision or supplemental decision.

(c) REVIEW BY APPEALS DIVISION.

(1) The petitioner or any notified jurisdiction may appeal the supplemental decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's supplemental decision, or within a period of extension authorized by subdivision (b)(910). Such an objection must state the basis for the objecting jurisdiction's disagreement with the supplemental decision and include all additional information in its possession that supports its position.

(2) If a timely objection to its supplemental decision is submitted, the Allocation Group will, within 30 days of receipt of the objection, prepare the file and forward it to the Appeals Division. The petitioner, all notified jurisdictions, any other jurisdiction that would be substantially affected if the petition were granted, and the Sales and Use Tax Department will thereafter be mailed notice of the appeals conference, which will generally be sent at least 45 days prior to the scheduled date of the conference.

(A) Petitioner or any notified jurisdiction may continue to discuss the dispute with staff of the Sales and Use Tax Department after the dispute is referred to the Appeals Division. If, as a result of such discussions or otherwise, the Sales and Use Tax Department decides the supplemental decision of the Allocation Group was incorrect or that further investigation should be pursued, it shall so notify the Appeals Division, the petitioner, and all notified jurisdictions.

(B) If the Department sends notice to the Appeals Division in accordance with the subdivision (c)(2)(A) no later than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will suspend its review and the dispute will be returned to the Department. The Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(C) If the Department sends notice to the Appeals Division in accordance with subdivision (c)(2)(A) less than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will decide whether the dispute should be returned to the Department or remain with the Appeals Division, and notify the parties accordingly. If the dispute is returned to the Department, the Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(D) Where the Department issues a second supplemental decision in accordance with subdivision (c)(2)(B) or (c)(2)(C), it will send a copy of the decision to the petitioner, any notified jurisdiction, and any other jurisdiction that is substantially affected by the second supplemental decision, any of whom may appeal the second supplemental decision by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(910). If no such timely objection is submitted, the second supplemental decision is final as to the petitioner and all notified jurisdictions.

(3) The appeals conference is not an adversarial proceeding, but rather is an informal discussion where the petitioner, any notified jurisdictions who wish to participate, and the Sales and Use Tax Department have the opportunity to explain their respective positions regarding the relevant facts and law to the Appeals Division conference holder. To make the conference most productive, each participant should submit all facts, law, argument, and other information in support of its position to the Appeals Division conference holder, and to the other participants, at least 15 days before the date of the appeals conference; however, relevant facts and arguments will be accepted at any time at or before the appeals conference. If, during the appeals conference, a participant requests permission to submit additional written arguments and documentary evidence, the conference holder may grant that participant ~~45-30 days after the appeals conference, or 30 days with sufficient justification~~, to submit to the conference holder, with copies to all other participants, such additional arguments and evidence. Any other participant at the conference who is in opposition to the requesting participant on the issue(s) covered by the additional submission is allowed ~~45-30 days~~ to submit to the conference holder, with copies to all other participants, arguments and evidence in response. No request by a participant for further time to submit additional arguments or evidence will be granted without the approval of the Assistant Chief Counsel of the Appeals Division or his or her designee. The Appeals Division on its own initiative may also request, at or after the appeals conference, further submissions from any participant.

(4) Within 90 days after the final submission authorized by subdivision (c)(3), the Appeals Division will issue a written Decision and Recommendation (D&R) setting forth the applicable facts and law and the conclusions of the Appeals Division. The Chief Counsel may allow up to 90 additional days to prepare the D&R upon request of the Appeals Division. Both the request and the Chief Counsel's response granting or denying the request for additional time must be in writing and copies provided to the petitioner, all notified jurisdictions, and the Sales and Use Tax Department. A copy of the D&R will be mailed to the petitioner, to all notified jurisdictions, to any other jurisdiction that will be substantially affected by the D&R, and to the Sales and Use Tax Department.

(5) The petitioner or any notified jurisdiction may appeal the D&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R.

(6) The petitioner, any notified jurisdiction, or the Sales and Use Tax Department may also appeal the D&R, or any Supplemental D&R (SD&R), by submitting a written request for reconsideration (RFR) to the Appeals Division before expiration of the time during which a timely request for Board hearing may be submitted, or if a Board hearing has been requested, prior to that hearing. If a jurisdiction or the Sales and Use Tax Department submits an RFR before the time for requesting a Board hearing has expired, the Appeals Division will issue an SD&R to consider the request, after obtaining whatever additional information or arguments from the parties that it deems appropriate. If an RFR is submitted after a jurisdiction has requested a Board hearing, the Appeals Division will determine whether it should issue an SD&R in response. A copy of the SD&R issued under this subdivision or under subdivision (c)(7) will be mailed to the petitioner, to all notified jurisdictions, to any other jurisdiction that will be substantially affected by the SD&R, and to the Sales and Use Tax Department. The petitioner or any notified jurisdiction may appeal the SD&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the SD&R.

(7) Whether or not an RFR is submitted, at any time prior to the time the recommendation in the D&R or prior SD&R is acted on by the Department as a final matter or the Board has held an oral hearing on the petition, the Appeals Division may issue an SD&R as it deems necessary to augment, clarify, or correct the information, analysis, or conclusions contained in the D&R or any prior SD&R.

(8) If no RFR is submitted under subdivision (c)(6) or request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R or any SD&R, the D&R or SD&R as applicable is final as to the petitioner and all notified jurisdictions unless the Appeals Division issues an SD&R under subdivision (c)(7).

(d) REVIEW BY BOARD.

(1) The petitioner or any notified jurisdiction may submit a written request for Board hearing if it does so to the Board Proceedings Division within 60 days of the date of mailing of the D&R or any SD&R. Such a request must state the basis for the jurisdiction's disagreement with the D&R or SD&R as applicable and include all additional information in its possession that supports its position.

(2) If the Board Proceedings Division receives a timely request for hearing under subdivision (d)(1), it will notify the Sales and Use Tax Department, the petitioner, any notified jurisdiction, any other jurisdiction that would be substantially affected if the petition were granted, and the taxpayer(s) whose allocations are the subject of the petition, that the petition for reallocation of local tax is being scheduled for a Board hearing to determine the proper allocation.

(3) The Sales and Use Tax Department, the petitioner, and all jurisdictions notified of the Board hearing pursuant to subdivision (d)(2) are parties and may participate in the Board hearing. The taxpayer is not a party to the Board hearing unless it chooses to actively participate in the hearing process by either filing a brief or making a presentation at the hearing.

(4) Briefs may be submitted for the Board hearing in accordance with California Code of Regulations, title 18, sections 5270 and 5271.

(5) To the extent not inconsistent with this regulation, the hearing will be conducted in accordance with Chapter 5 of the Board of Equalization Rules for Tax Appeals (Cal. Code Regs., tit. 18, § 5510, et seq.). The Board will apply the preponderance of evidence rules set forth in subdivision (b)(2) in reaching its decision and not the burden of proof rules set forth in California Code of Regulations, title 18, section 5541. The Board's final decision on a petition for reallocation exhausts all administrative remedies on the matter for all jurisdictions.

(e) LIMITATION PERIOD FOR REDISTRIBUTIONS. Redistributions shall not include amounts originally distributed earlier than two quarterly periods prior to the quarter of the date of knowledge.

(f) APPLICATION TO SECTION 6066.3 INQUIRIES. The procedures set forth herein for submitting a petition for reallocation of local tax are separate from those applicable to a submission under Revenue and Taxation Code section 6066.3. If a petition under the procedures set forth herein and a submission under section 6066.3 are both filed for the same alleged improper distribution, only the earliest submission will be processed, with the date of knowledge established under the procedures applicable to that earliest submission. However, the procedures set forth in subdivisions (b), (c), and (d) also apply to appeals from reallocation determinations made under section 6066.3.

(g) OPERATIVE DATE AND TRANSITION RULES.

This regulation is intended to reduce the time required to decide the validity of reallocation petitions and otherwise improve the process for doing so. Regulation 1807 was repealed and readopted in 2008. It is The readopted regulation is intended to have a neutral impact only on the current dispute over the continuing validity of certain petitions that ~~are~~ were governed by prior Regulation 1807 (effective February 22, 2003).

(1) The operative date of this regulation as readopted in 2008 and any amendments thereto is the effective date it ~~becomes effective~~ under Section 11343.4 of the Government Code (thirty days after ~~it has been approved~~ approval by the Office of Administrative Law and ~~forwarded~~ forwarding to the Secretary of State) and ~~it~~ there shall ~~have~~ be no retroactive effect.

(2) ~~Petitions filed prior to the operative date of this regulation. Notwithstanding subdivision (g)(3), petitions shall~~ be reviewed, appealed and decided in accordance with this regulation as to procedures occurring after ~~that~~ its operative date or that of any amendments thereto.

(3) ~~All such~~ petitions filed prior to January 1, 2003 and denied by Board Management must have perfected any access they may have had to a Board Member hearing no later than 60 days after the September 10, 2008, operative date of this regulation.

Regulation 1828. PETITIONS FOR DISTRIBUTION OR REDISTRIBUTION OF TRANSACTIONS AND USE TAX.

(a) DEFINITIONS.

(1) DISTRICT TAX. "District tax" means a transaction and use tax adopted pursuant to Revenue and Taxation Code section 7251, et seq., or pursuant to Revenue and Taxation Code section 7285, et seq., and administered by the Board.

(2) DISTRICT. "District" means any entity, including a city, county, city and county, or special taxing jurisdiction, which has adopted a district tax.

(3) PETITION. "Petition" means a request or inquiry from a district for investigation of suspected improper distribution or nondistribution of district tax submitted in writing to the Allocation Group of the Sales and Use Tax Department. The petition must contain sufficient factual data to support the probability that district tax has not been distributed or has been erroneously distributed. Sufficient factual data should include, for each business location being questioned:

(A) Taxpayer name, including owner name and fictitious business name or dba (doing business as) designation.

(B) Taxpayer's permit number or a notation stating "No Permit Number."

(C) Complete business address of the taxpayer.

(D) Complete description of taxpayer's business activity or activities.

(E) Specific reasons and evidence why the distribution or nondistribution is questioned, identifying the delivery location or locations of the property the sales of which are at issue. If the petition alleges that the subject transactions are subject to the district's use tax, evidence that the retailer is engaged in business in the district as provided in California Code of Regulations, title 18, section 1827, subdivision (c).

(F) Name, title, and telephone number of the contact person.

(G) The tax reporting periods involved.

"Petition" also includes an appeal by a district from a notification from the Local Revenue Allocation Unit of the Sales and Use Tax Department that district taxes previously allocated to it were misallocated and will be reallocated. Such a district may object to that notification by submitting a written petition to the Allocation Group within 30 days of the date of mailing of the notification or within a period of extension described below. The petition must include a copy of the notification and specify the reason the district disputes it. If a district does not submit such a petition within 30 days of the date of mailing of the notification, or within a period of extension, the notification of the Local Revenue Allocation Unit is final as to the district so notified.

The district may request a 30-day extension to submit a written objection to a notification of misallocation from the Local Revenue Allocation Unit. Such a request must provide a reasonable explanation for the requesting district's inability to submit its objection within 30 days and must be received by the Local Revenue Allocation Unit within 30 days of the date of mailing of its notification. Within five days of receipt of the request, the Local Revenue Allocation Unit will mail notification to the district whether the request is granted or denied. If a timely request for extension is submitted, the time for the district to file a written objection is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the district to submit a written objection to the notification of the Local Revenue Allocation Unit is further extended to the 60th day after the date of mailing of the notification of misallocation.

(4) PETITIONER. "Petitioner" is a district that has filed a valid petition pursuant to subdivision (a)(3).

(5) DATE OF KNOWLEDGE. Unless an earlier date is operationally documented by the Board, "date of knowledge" is the date on which the Allocation Group receives a valid petition. Where an error in distribution that is reasonably covered by the petition is confirmed based on additional facts or evidence supplied by the petitioner or otherwise learned as a direct result of investigating the petition, the date of knowledge is the date on which the Allocation Group received the petition.

(6) SUBSTANTIALLY AFFECTED DISTRICT. "Substantially affected district" is a district for which the decision on a petition would result in a decrease to its total distribution of 5 percent or more of its average quarterly distribution (generally determined with reference to the prior four calendar quarters) or of \$50,000 or more.

(7) NOTIFIED DISTRICT. "Notified district" is a district that has been notified as a substantially affected district.

(b) REVIEW BY ALLOCATION GROUP.

- (1) The Allocation Group will promptly acknowledge a submission intended as a petition.
- (2) The Allocation Group will review the petition and issue to the petitioner a written decision to grant or deny the petition, including the basis for that decision. The written decision will also note the date of knowledge, and if other than the date the petition was received, will include the basis for that date. A redistribution will be made if the preponderance of evidence, whether provided by petitioner or obtained by Board staff as part of its investigation of the petition, shows that there was an error in distribution. If the preponderance of evidence does not show that an error in distribution occurred, the petition will be denied.
- (3) If the Allocation Group does not issue a decision within six months of the date it receives a valid petition, the petitioner may request that the Allocation Group issue its decision without regard to the status of its investigation. Within 90 days of receiving such a request, the Allocation Group will issue its decision based on the information in its possession.
- (4) If the decision of the Allocation Group is that the asserted error in distribution did not occur and that the petition should be denied, in whole or in part, the petitioner may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).
- (5) If the decision of the Allocation Group is that an error in distribution did occur, it will also mail a copy of its decision to any substantially affected district. Any such notified district may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).
- (6) The petitioner or any notified district may appeal the decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's decision, or within a period of extension authorized by subdivision (b)(910). If no such timely objection is submitted, the decision of the Allocation Group is final as to the petitioner and all notified districts.
- (7) If the petitioner or a notified district submits a timely written objection to the decision of the Allocation Group, the Allocation Group will consider the objection and issue a written supplemental decision to grant or deny the objection, including the basis for that decision. A copy of the supplemental decision will be mailed to the petitioner, to any notified district, and to any other district that is substantially affected by the supplemental decision.
- (8) If the Allocation Group does not issue a supplemental decision within six months of the date it receives a written timely objection to the decision of the Allocation Group, the petitioner or any notified district may request that the Allocation Group issue its supplemental decision without regard to the status of its investigation. Within 90 days of receiving such a request, the Allocation Group will issue its supplemental decision based on the information in its possession.
- (89) The petitioner or any notified district may appeal the supplemental decision of the Allocation Group by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(910). If no such timely objection is submitted, the supplemental decision of the Allocation Group is final as to the petitioner and all notified districts.
- (910) The petitioner or any notified district may request a 30-day extension to submit a written objection under subdivision (b)(6) or under subdivision (b)(89), as applicable. Such request must provide a reasonable explanation for the requesting district's inability to submit its objection within 30 days, must be copied to all other districts to whom the Allocation Group mailed a copy of its decision or supplemental decision (to the extent known by the requesting district), and must be *received* by the Allocation Group within 30 days of the date of mailing of its decision or supplemental decision. Within five days of receipt of the request, the Allocation Group will mail notification to the petitioner and to all notified districts whether the request is granted or denied. If a timely request for an extension is submitted, the time for the petitioner and any notified district to file a written objection to the decision or supplemental decision of the Allocation Group is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the petitioner and all notified districts to submit a written objection to the decision or supplemental decision of the Allocation Group is further extended to the 60th day after the date of mailing of the decision or supplemental decision.

(c) REVIEW BY APPEALS DIVISION.

- (1) The petitioner or any notified district may appeal the supplemental decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's supplemental decision, or within a period of extension authorized by subdivision (b)(910). Such an objection must state the basis for the objecting district's disagreement with the supplemental decision and include all additional information in its possession that supports its position.

(2) If a timely objection to its supplemental decision is submitted, the Allocation Group will, within 30 days of receipt of the objection, prepare the file and forward it to the Appeals Division. The petitioner, all notified districts, any other district that would be substantially affected if the petition were granted, and the Sales and Use Tax Department will thereafter be mailed notice of the appeals conference, which will generally be sent at least 45 days prior to the scheduled date of the conference.

(A) Petitioner or any notified district may continue to discuss the dispute with staff of the Sales and Use Tax Department after the dispute is referred to the Appeals Division. If, as a result of such discussions or otherwise, the Sales and Use Tax Department decides the supplemental decision of the Allocation Group was incorrect or that further investigation should be pursued, it shall so notify the Appeals Division, the petitioner, and all notified districts.

(B) If the Department sends notice to the Appeals Division in accordance with the subdivision (c)(2)(A) no later than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will suspend its review and the dispute will be returned to the Department. The Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(C) If the Department sends notice to the Appeals Division in accordance with subdivision (c)(2)(A) less than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will decide whether the dispute should be returned to the Department or remain with the Appeals Division, and notify the parties accordingly. If the dispute is returned to the Department, the Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(D) Where the Department issues a second supplemental decision in accordance with subdivision (c)(2)(B) or (c)(2)(C), it will send a copy of the decision to the petitioner, any notified district, and any other district that is substantially affected by the second supplemental decision, any of whom may appeal the second supplemental decision by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(9). If no such timely objection is submitted, the second supplemental decision is final as to the petitioner and all notified districts.

(3) The appeals conference is not an adversarial proceeding, but rather is an informal discussion where the petitioner, any notified districts who wish to participate, and the Sales and Use Tax Department have the opportunity to explain their respective positions regarding the relevant facts and law to the Appeals Division conference holder. To make the conference most productive, each participant should submit all facts, law, argument, and other information in support of its position to the Appeals Division conference holder, and to the other participants, at least 15 days before the date of the appeals conference; however, relevant facts and arguments will be accepted at any time at or before the appeals conference. If, during the appeals conference, a participant requests permission to submit additional written arguments and documentary evidence, the conference holder may grant that participant 30 days after the appeals conference, or 30 days with sufficient justification, to submit to the conference holder, with copies to all other participants, such additional arguments and evidence. Any other participant at the conference who is in opposition to the requesting participant on the issue(s) covered by the additional submission is allowed 45-30 days to submit to the conference holder, with copies to all other participants, arguments and evidence in response. No request by a participant for further time to submit additional arguments or evidence will be granted without the approval of the Assistant Chief Counsel of the Appeals Division or his or her designee. The Appeals Division on its own initiative may also request, at or after the appeals conference, further submissions from any participant.

(4) Within 90 days after the final submission authorized by subdivision (c)(3), the Appeals Division will issue a written Decision and Recommendation (D&R) setting forth the applicable facts and law and the conclusions of the Appeals Division. The Chief Counsel may allow up to 90 additional days to prepare the D&R upon request of the Appeals Division. Both the request and the Chief Counsel's response granting or denying the request for additional time must be in writing and copies provided to the petitioner, all notified districts, and the Sales and Use Tax Department. A copy of the D&R will be mailed to the petitioner, to all notified districts, to any other district that will be substantially affected by the D&R, and to the Sales and Use Tax Department.

(5) The petitioner or any notified district may appeal the D&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R.

(6) The petitioner, any notified district, or the Sales and Use Tax Department may also appeal the D&R, or any Supplemental D&R (SD&R), by submitting a written request for reconsideration (RFR) to the Appeals Division before expiration of the time during which a timely request for Board hearing may be submitted, or if a Board hearing has been requested, prior to that hearing. If a district or the Sales and Use Tax Department submits an RFR before the time for requesting a Board hearing has expired, the Appeals Division will issue an SD&R to consider the request, after obtaining whatever additional information or arguments from the parties that it deems appropriate. If an RFR is submitted after a district has requested a Board hearing, the Appeals Division will determine whether it should issue an SD&R in response. A copy of the SD&R issued under this subdivision or under subdivision (c)(7) will be mailed to the petitioner, to all notified districts, to any other district that will be substantially affected by the SD&R, and to the

Sales and Use Tax Department. The petitioner or any notified district may appeal the SD&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the SD&R.

(7) Whether or not an RFR is submitted, at any time prior to the time the recommendation in the D&R or prior SD&R is acted on by the Department as a final matter or the Board has held an oral hearing on the petition, the Appeals Division may issue an SD&R as it deems necessary to augment, clarify, or correct the information, analysis, or conclusions contained in the D&R or any prior SD&R.

(8) If no RFR is submitted under subdivision (c)(6) or request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R or any SD&R, the D&R or SD&R as applicable is final as to the petitioner and all notified districts unless the Appeals Division issues an SD&R under subdivision (c)(7).

(d) REVIEW BY BOARD.

(1) The petitioner or any notified district may submit a written request for Board hearing if it does so to the Board Proceedings Division within 60 days of the date of mailing of the D&R or any SD&R. Such a request must state the basis for the district's disagreement with the D&R or SD&R as applicable and include all additional information in its possession that supports its position.

(2) If the Board Proceedings Division receives a timely request for hearing under subdivision (d)(1), it will notify the Sales and Use Tax Department, the petitioner, any notified district, any other district that would be substantially affected if the petition were granted, and the taxpayer(s) whose distribution (or nondistribution) are the subject of the petition, that the petition for redistribution of district tax is being scheduled for a Board hearing to determine the proper distribution.

(3) The Sales and Use Tax Department, the petitioner, and all districts notified of the Board hearing pursuant to subdivision (d)(2) are parties and may participate in the Board hearing. The taxpayer is not a party to the Board hearing unless it chooses to actively participate in the hearing process by either filing a brief or making a presentation at the hearing.

(4) Briefs may be submitted for the Board hearing in accordance with California Code of Regulations, title 18, sections 5270 and 5271.

(5) To the extent not inconsistent with this regulation, the hearing will be conducted in accordance with Chapter 5 of the Board of Equalization Rules for Tax Appeals (Cal. Code Regs., tit. 18, § 5510, et seq.). The Board will apply the preponderance of evidence rules set forth in subdivision (b)(2) in reaching its decision and not the burden of proof rules set forth in California Code of Regulations, title 18, section 5541. The Board's final decision on a petition for redistribution exhausts all administrative remedies on the matter for all districts.

(e) LIMITATION PERIOD FOR REDISTRIBUTIONS. For redistributions where the date of knowledge is prior to January 1, 2008, the standard three-year statute of limitations is applicable, based on the date of knowledge. For redistributions where the date of knowledge is on or after January 1, 2008, redistributions shall not include amounts originally distributed earlier than two quarterly periods prior to the quarter of the date of knowledge.

(f) OPERATIVE DATE AND TRANSITION RULES.

This regulation is intended to reduce the time required to decide the validity of redistribution petitions and otherwise improve the process for doing so. Regulation 1828 was repealed and readopted in 2008. It is ~~The readopted regulation~~ is intended to have a neutral impact only on the current dispute over the continuing validity of certain petitions that ~~are~~ were governed by prior Regulation 1828 (effective June 17, 2004).

(1) The operative date of this regulation as readopted in 2008 and any amendments thereto is the effective date ~~it becomes effective~~ under Section 11343.4 of the Government Code (thirty days after ~~it has been approved~~ approval by the Office of Administrative Law and ~~forwarded~~ forwarding to the Secretary of State) and ~~there shall have be~~ no retroactive effect.

(2) ~~Petitions filed prior to the operative date of this regulation.~~ Notwithstanding subdivision (f)(3), petitions shall be reviewed, appealed and decided in accordance with this regulation as to procedures occurring after ~~that~~ its operative date or that of any amendments thereto.

(3) All ~~such~~ petitions filed prior to July 1, 2004 and denied by Board Management must have ~~perfected~~ any access they may have had to a Board Member hearing no later than 60 days after the September 10, 2008 operative date of this regulation.

ALTERNATIVE 2:

Regulation 1807. PETITIONS FOR REALLOCATION OF LOCAL TAX.

(a) DEFINITIONS.

(1) LOCAL TAX. "Local tax" means a local sales and use tax adopted pursuant to Revenue and Taxation Code section 7200, et seq., and administered by the Board.

(2) JURISDICTION. "Jurisdiction" means any city, county, city and county, or redevelopment agency which has adopted a local tax.

(3) PETITION. "Petition" means a request or inquiry from a jurisdiction, other than a submission under Revenue and Taxation Code section 6066.3, for investigation of suspected misallocation of local tax submitted in writing to the Allocation Group of the Sales and Use Tax Department. The petition must contain sufficient factual data to support the probability that local tax has been erroneously allocated and distributed. Sufficient factual data should include, for each business location being questioned:

(A) Taxpayer name, including owner name and fictitious business name or dba (doing business as) designation.

(B) Taxpayer's permit number or a notation stating "No Permit Number."

(C) Complete business address of the taxpayer.

(D) Complete description of taxpayer's business activity or activities.

(E) Specific reasons and evidence why the taxpayer's allocation is questioned. If the petition alleges that a misallocation occurred because a sale location is unregistered, evidence that the questioned location is a selling location or that it is a place of business as defined by California Code of Regulations, title 18, section 1802. If the petition alleges that a misallocation occurred because the tax for a sale shipped from an out-of-state location was actually sales tax and not use tax, evidence that there was participation in the sale by an in-state office of the retailer and that title to the goods passed to the purchaser inside California.

(F) Name, title, and telephone number of the contact person.

(G) The tax reporting periods involved.

"Petition" also includes an appeal by a jurisdiction from a notification from the Local Revenue Allocation Unit of the Sales and Use Tax Department that local taxes previously allocated to it were misallocated and will be reallocated. Such a jurisdiction may object to that notification by submitting a written petition to the Allocation Group within 30 days of the date of mailing of the notification or within a period of extension described below. The petition must include a copy of the notification and specify the reason the jurisdiction disputes it. If a jurisdiction does not submit such a petition within 30 days of the date of mailing of the notification, or within a period of extension, the notification of the Local Revenue Allocation Unit is final as to the jurisdiction so notified.

The jurisdiction may request a 30-day extension to submit a written objection to a notification of misallocation from the Local Revenue Allocation Unit. Such request must provide a reasonable explanation for the requesting jurisdiction's inability to submit its objection within 30 days and must be received by the Local Revenue Allocation Unit within 30 days of the date of mailing of its notification. Within five days of receipt of the request, the Local Revenue Allocation Unit will mail notification to the jurisdiction whether the request is granted or denied. If a timely request for an extension is submitted, the time for the jurisdiction to file a written objection is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the jurisdiction to submit a written objection to the notification of the Local Revenue Allocation Unit is further extended to the 60th day after the date of mailing of the notification of misallocation.

(4) PETITIONER. "Petitioner" is a jurisdiction that has filed a valid petition pursuant to subdivision (a)(3).

(5) DATE OF KNOWLEDGE. Unless an earlier date is operationally documented by the Board, "date of knowledge" is the date on which the Allocation Group receives a valid petition. Where a misallocation that is reasonably covered by the petition is confirmed based on additional facts or evidence supplied by the petitioner or otherwise learned as a direct result of investigating the petition, the date of knowledge is the date on which the Allocation Group received the petition.

(6) SUBSTANTIALLY AFFECTED JURISDICTION. "Substantially affected jurisdiction" is a jurisdiction for which the decision on a petition would result in a decrease to its total allocation of 5 percent or more of its average quarterly

allocation (generally determined with reference to the prior four calendar quarters) or of \$50,000 or more, and includes a jurisdiction whose allocation will be decreased solely as the result of a reallocation from the statewide and applicable countywide pools.

(7) NOTIFIED JURISDICTION. "Notified jurisdiction" is a jurisdiction that has been notified as a substantially affected jurisdiction.

(b) REVIEW BY ALLOCATION GROUP.

(1) The Allocation Group will promptly acknowledge a submission intended as a petition.

(2) The Allocation Group will review the petition and issue to the petitioner a written decision to grant or deny the petition, including the basis for that decision. The written decision will also note the date of knowledge, and if other than the date the petition was received, will include the basis for that date. A reallocation will be made if the preponderance of evidence, whether provided by petitioner or obtained by Board staff as part of its investigation of the petition, shows that there was a misallocation. If the preponderance of evidence does not show that a misallocation occurred, the petition will be denied.

(3) If the Allocation Group does not issue a decision within six months of the date it receives a valid petition, the petitioner may request that the Allocation Group issue its decision without regard to the status of its investigation. Within 90 days of receiving such a request, the Allocation Group will issue its decision based on the information in its possession.

(4) If the decision of the Allocation Group is that the asserted misallocation did not occur and that the petition should be denied, in whole or in part, the petitioner may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(5) If the decision of the Allocation Group is that a misallocation did occur, it will also mail a copy of its decision to any substantially affected jurisdiction. Any such notified jurisdiction may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(6) The petitioner or any notified jurisdiction may appeal the decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's decision, or within a period of extension authorized by subdivision (b)(9). If no such timely objection is submitted, the decision of the Allocation Group is final as to the petitioner and all notified jurisdictions.

(7) If the petitioner or a notified jurisdiction submits a timely written objection to the decision of the Allocation Group, the Allocation Group will consider the objection and, within 90 days, issue a written supplemental decision to grant or deny the objection, including the basis for that decision. A copy of the supplemental decision will be mailed to the petitioner, to any notified jurisdiction, and to any other jurisdiction that is substantially affected by the supplemental decision.

(8) The petitioner or any notified jurisdiction may appeal the supplemental decision of the Allocation Group by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(9). If no such timely objection is submitted, the supplemental decision of the Allocation Group is final as to the petitioner and all notified jurisdictions.

(9) The petitioner or any notified jurisdiction may request a 30-day extension to submit a written objection under subdivision (b)(6) or under subdivision (b)(8), as applicable. Such request must provide a reasonable explanation for the requesting jurisdiction's inability to submit its objection within 30 days, must be copied to all other jurisdictions to whom the Allocation Group mailed a copy of its decision or supplemental decision (to the extent known by the requesting jurisdiction), and must be *received* by the Allocation Group within 30 days of the date of mailing of its decision or supplemental decision. Within five days of receipt of the request, the Allocation Group will mail notification to the petitioner and to all notified jurisdictions whether the request is granted or denied. If a timely request for an extension is submitted, the time for the petitioner and any notified jurisdiction to file a written objection to the decision or supplemental decision of the Allocation Group is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the petitioner and all notified jurisdictions to submit a written objection to the decision or supplemental decision of the Allocation Group is further extended to the 60th day after the date of mailing of the decision or supplemental decision.

(c) REVIEW BY APPEALS DIVISION.

(1) The petitioner or any notified jurisdiction may appeal the supplemental decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's supplemental decision, or within a period of extension authorized by subdivision (b)(9). Such an objection must state the basis for the objecting jurisdiction's disagreement with the supplemental decision and include all additional information in its possession that supports its position.

(2) If a timely objection to its supplemental decision is submitted, the Allocation Group will, within 30 days of receipt of the objection, prepare the file and forward it to the Appeals Division. The petitioner, all notified jurisdictions, any other jurisdiction that would be substantially affected if the petition were granted, and the Sales and Use Tax Department will thereafter be mailed notice of the appeals conference, which will generally be sent at least 45 days prior to the scheduled date of the conference. The Appeals Division shall schedule an appeals conference within 6 months from receipt of the file from the Allocation Group.

(A) Petitioner or any notified jurisdiction may continue to discuss the dispute with staff of the Sales and Use Tax Department after the dispute is referred to the Appeals Division. If, as a result of such discussions or otherwise, the Sales and Use Tax Department decides the supplemental decision of the Allocation Group was incorrect or that further investigation should be pursued, it shall so notify the Appeals Division, the petitioner, and all notified jurisdictions.

(B) If the Department sends notice to the Appeals Division in accordance with the subdivision (c)(2)(A) no later than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will suspend its review and the dispute will be returned to the Department. The Department will thereafter issue a second supplemental decision within 60 days, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(C) If the Department sends notice to the Appeals Division in accordance with subdivision (c)(2)(A) less than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will decide whether the dispute should be returned to the Department or remain with the Appeals Division, and notify the parties accordingly. If the dispute is returned to the Department, the Department will thereafter issue a second supplemental decision within 60 days, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(D) Where the Department issues a second supplemental decision in accordance with subdivision (c)(2)(B) or (c)(2)(C), it will send a copy of the decision to the petitioner, any notified jurisdiction, and any other jurisdiction that is substantially affected by the second supplemental decision, any of whom may appeal the second supplemental decision by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(9). If an objection to a second supplemental decision is filed by either the petitioner or notified jurisdiction, it will be immediately forwarded to the Appeals Division. An appeals conference shall be scheduled within 90 days of receipt of the objection. If no such timely objection is submitted, the second supplemental decision is final as to the petitioner and all notified jurisdictions.

(3) The appeals conference is not an adversarial proceeding, but rather is an informal discussion where the petitioner, any notified jurisdictions who wish to participate, and the Sales and Use Tax Department have the opportunity to explain their respective positions regarding the relevant facts and law to the Appeals Division conference holder. To make the conference most productive, each participant should submit all facts, law, argument, and other information in support of its position to the Appeals Division conference holder, and to the other participants, at least 15 days before the date of the appeals conference; however, relevant facts and arguments will be accepted at any time at or before the appeals conference. If, during the appeals conference, a participant requests permission to submit additional written arguments and documentary evidence, the conference holder may grant that participant 45-30 days after the appeals conference, or 30 days with sufficient justification, to submit to the conference holder, with copies to all other participants, such additional arguments and evidence. Any other participant at the conference who is in opposition to the requesting participant on the issue(s) covered by the additional submission is allowed 45-30 days to submit to the conference holder, with copies to all other participants, arguments and evidence in response. No request by a participant for further time to submit additional arguments or evidence will be granted without the approval of the Assistant Chief Counsel of the Appeals Division or his or her designee. The Appeals Division on its own initiative may also request, at or after the appeals conference, further submissions from any participant.

(4) Within 90 days after the final submission authorized by subdivision (c)(3), the Appeals Division will issue a written Decision and Recommendation (D&R) setting forth the applicable facts and law and the conclusions of the Appeals Division. The Chief Counsel may allow up to 90-30 additional days to prepare the D&R upon request of the Appeals Division. Both the request and the Chief Counsel's response granting or denying the request for additional time must be in writing and copies provided to the petitioner, all notified jurisdictions, and the Sales and Use Tax Department. A copy of the D&R will be mailed to the petitioner, to all notified jurisdictions, to any other jurisdiction that will be substantially affected by the D&R, and to the Sales and Use Tax Department.

(5) The petitioner or any notified jurisdiction may appeal the D&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R. If no such timely request for Board hearing is submitted, the D&R is final as to the petitioner and all notified jurisdictions.

~~—(6) The petitioner, any notified jurisdiction, or the Sales and Use Tax Department may also appeal the D&R, or any Supplemental D&R (SD&R), by submitting a written request for reconsideration (RFR) to the Appeals Division~~

~~before expiration of the time during which a timely request for Board hearing may be submitted, or if a Board hearing has been requested, prior to that hearing. If a jurisdiction or the Sales and Use Tax Department submits an RFR before the time for requesting a Board hearing has expired, the Appeals Division will issue an SD&R to consider the request, after obtaining whatever additional information or arguments from the parties that it deems appropriate. If an RFR is submitted after a jurisdiction has requested a Board hearing, the Appeals Division will determine whether it should issue an SD&R in response. A copy of the SD&R issued under this subdivision or under subdivision (c)(7) will be mailed to the petitioner, to all notified jurisdictions, to any other jurisdiction that will be substantially affected by the SD&R, and to the Sales and Use Tax Department. The petitioner or any notified jurisdiction may appeal the SD&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the SD&R.~~

~~—(7) Whether or not an RFR is submitted, at any time prior to the time the recommendation in the D&R or prior SD&R is acted on by the Department as a final matter or the Board has held an oral hearing on the petition, the Appeals Division may issue an SD&R as it deems necessary to augment, clarify, or correct the information, analysis, or conclusions contained in the D&R or any prior SD&R.~~

~~—(8) If no RFR is submitted under subdivision (c)(6) or request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R or any SD&R, the D&R or SD&R as applicable is final as to the petitioner and all notified jurisdictions unless the Appeals Division issues an SD&R under subdivision (c)(7).~~

(d) REVIEW BY BOARD.

(1) The petitioner or any notified jurisdiction may submit a written request for Board hearing if it does so to the Board Proceedings Division within 60 days of the date of mailing of the D&R ~~or any SD&R~~. Such a request must state the basis for the jurisdiction's disagreement with the D&R ~~or SD&R~~ as applicable and include all additional information in its possession that supports its position.

(2) If the Board Proceedings Division receives a timely request for hearing under subdivision (d)(1), it will notify the Sales and Use Tax Department, the petitioner, any notified jurisdiction, any other jurisdiction that would be substantially affected if the petition were granted, and the taxpayer(s) whose allocations are the subject of the petition, that the petition for reallocation of local tax is being scheduled for a Board hearing to determine the proper allocation. The notice of hearing will be issued within 90 days from the date of the request for hearing.

(3) The Sales and Use Tax Department, the petitioner, and all jurisdictions notified of the Board hearing pursuant to subdivision (d)(2) are parties and may participate in the Board hearing. The taxpayer is not a party to the Board hearing unless it chooses to actively participate in the hearing process by either filing a brief or making a presentation at the hearing.

(4) Briefs may be submitted for the Board hearing in accordance with California Code of Regulations, title 18, sections 5270 and 5271.

(5) To the extent not inconsistent with this regulation, the hearing will be conducted in accordance with Chapter 5 of the Board of Equalization Rules for Tax Appeals (Cal. Code Regs., tit. 18, § 5510, et seq.). The Board will apply the preponderance of evidence rules set forth in subdivision (b)(2) in reaching its decision and not the burden of proof rules set forth in California Code of Regulations, title 18, section 5541. The Board's final decision on a petition for reallocation exhausts all administrative remedies on the matter for all jurisdictions.

(e) LIMITATION PERIOD FOR REDISTRIBUTIONS. Redistributions shall not include amounts originally distributed earlier than two quarterly periods prior to the quarter of the date of knowledge.

(f) APPLICATION TO SECTION 6066.3 INQUIRIES. The procedures set forth herein for submitting a petition for reallocation of local tax are separate from those applicable to a submission under Revenue and Taxation Code section 6066.3. If a petition under the procedures set forth herein and a submission under section 6066.3 are both filed for the same alleged improper distribution, only the earliest submission will be processed, with the date of knowledge established under the procedures applicable to that earliest submission. However, the procedures set forth in subdivisions (b), (c), and (d) also apply to appeals from reallocation determinations made under section 6066.3.

(g) OPERATIVE DATE AND TRANSITION RULES. This regulation is intended to reduce the time required to decide the validity of reallocation petitions and otherwise improve the process for doing so. It is intended to have a neutral impact only on the current dispute over the continuing validity of certain petitions that are governed by prior Regulation 1807 (effective February 22, 2003).

(1) The operative date of this regulation is the date it becomes effective under Section 11343.4 of the Government Code (thirty days after it has been approved by the Office of Administrative Law and forwarded to the Secretary of State) and it shall have no retroactive effect.

(2) Petitions filed prior to the operative date of this regulation, shall be reviewed, appealed and decided in accordance with this regulation as to procedures occurring after that date. All such petitions filed prior to January 1, 2003 and denied by Board Management must perfect any access they may have to a Board Member hearing no later than 60 days after the operative date of this regulation.

Regulation 1828. PETITIONS FOR DISTRIBUTION OR REDISTRIBUTION OF TRANSACTIONS AND USE TAX.

(a) DEFINITIONS.

(1) DISTRICT TAX. "District tax" means a transaction and use tax adopted pursuant to Revenue and Taxation Code section 7251, et seq., or pursuant to Revenue and Taxation Code section 7285, et seq., and administered by the Board.

(2) DISTRICT. "District" means any entity, including a city, county, city and county, or special taxing jurisdiction, which has adopted a district tax.

(3) PETITION. "Petition" means a request or inquiry from a district for investigation of suspected improper distribution or nondistribution of district tax submitted in writing to the Allocation Group of the Sales and Use Tax Department. The petition must contain sufficient factual data to support the probability that district tax has not been distributed or has been erroneously distributed. Sufficient factual data should include, for each business location being questioned:

(A) Taxpayer name, including owner name and fictitious business name or dba (doing business as) designation.

(B) Taxpayer's permit number or a notation stating "No Permit Number."

(C) Complete business address of the taxpayer.

(D) Complete description of taxpayer's business activity or activities.

(E) Specific reasons and evidence why the distribution or nondistribution is questioned, identifying the delivery location or locations of the property the sales of which are at issue. If the petition alleges that the subject transactions are subject to the district's use tax, evidence that the retailer is engaged in business in the district as provided in California Code of Regulations, title 18, section 1827, subdivision (c).

(F) Name, title, and telephone number of the contact person.

(G) The tax reporting periods involved.

"Petition" also includes an appeal by a district from a notification from the Local Revenue Allocation Unit of the Sales and Use Tax Department that district taxes previously allocated to it were misallocated and will be reallocated. Such a district may object to that notification by submitting a written petition to the Allocation Group within 30 days of the date of mailing of the notification, or within a period of extension described below. The petition must include a copy of the notification and specify the reason the district disputes it. If a district does not submit such a petition within 30 days of the date of mailing of the notification, or within a period of extension, the notification of the Local Revenue Allocation Unit is final as to the district so notified.

The district may request a 30-day extension to submit a written objection to a notification of misallocation from the Local Revenue Allocation Unit. Such a request must provide a reasonable explanation for the requesting district's inability to submit its objection within 30 days and must be received by the Local Revenue Allocation Unit within 30 days of the date of mailing of its notification. Within five days of receipt of the request, the Local Revenue Allocation Unit will mail notification to the district whether the request is granted or denied. If a timely request for extension is submitted, the time for the district to file a written objection is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the district to submit a written objection to the notification of the Local Revenue Allocation Unit is further extended to the 60th day after the date of mailing of the notification of misallocation.

(4) PETITIONER. "Petitioner" is a district that has filed a valid petition pursuant to subdivision (a)(3).

(5) DATE OF KNOWLEDGE. Unless an earlier date is operationally documented by the Board, "date of knowledge" is the date on which the Allocation Group receives a valid petition. Where an error in distribution that is reasonably covered by the petition is confirmed based on additional facts or evidence supplied by the petitioner or otherwise learned as a direct result of investigating the petition, the date of knowledge is the date on which the Allocation Group received the petition.

(6) SUBSTANTIALLY AFFECTED DISTRICT. "Substantially affected district" is a district for which the decision on a petition would result in a decrease to its total distribution of 5 percent or more of its average quarterly distribution (generally determined with reference to the prior four calendar quarters) or of \$50,000 or more.

(7) NOTIFIED DISTRICT. "Notified district" is a district that has been notified as a substantially affected district.

(b) REVIEW BY ALLOCATION GROUP.

- (1) The Allocation Group will promptly acknowledge a submission intended as a petition.
- (2) The Allocation Group will review the petition and issue to the petitioner a written decision to grant or deny the petition, including the basis for that decision. The written decision will also note the date of knowledge, and if other than the date the petition was received, will include the basis for that date. A redistribution will be made if the preponderance of evidence, whether provided by petitioner or obtained by Board staff as part of its investigation of the petition, shows that there was an error in distribution. If the preponderance of evidence does not show that an error in distribution occurred, the petition will be denied.
- (3) If the Allocation Group does not issue a decision within six months of the date it receives a valid petition, the petitioner may request that the Allocation Group issue its decision without regard to the status of its investigation. Within 90 days of receiving such a request, the Allocation Group will issue its decision based on the information in its possession.
- (4) If the decision of the Allocation Group is that the asserted error in distribution did not occur and that the petition should be denied, in whole or in part, the petitioner may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).
- (5) If the decision of the Allocation Group is that an error in distribution did occur, it will also mail a copy of its decision to any substantially affected district. Any such notified district may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).
- (6) The petitioner or any notified district may appeal the decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's decision, or within a period of extension authorized by subdivision (b)(9). If no such timely objection is submitted, the decision of the Allocation Group is final as to the petitioner and all notified districts.
- (7) If the petitioner or a notified district submits a timely written objection to the decision of the Allocation Group, the Allocation Group will consider the objection and, within 90 days, issue a written supplemental decision to grant or deny the objection, including the basis for that decision. A copy of the supplemental decision will be mailed to the petitioner, to any notified district, and to any other district that is substantially affected by the supplemental decision.
- (8) The petitioner or any notified district may appeal the supplemental decision of the Allocation Group by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(9). If no such timely objection is submitted, the supplemental decision of the Allocation Group is final as to the petitioner and all notified districts.
- (9) The petitioner or any notified district may request a 30-day extension to submit a written objection under subdivision (b)(6) or under subdivision (b)(8), as applicable. Such request must provide a reasonable explanation for the requesting district's inability to submit its objection within 30 days, must be copied to all other districts to whom the Allocation Group mailed a copy of its decision or supplemental decision (to the extent known by the requesting district), and must be *received* by the Allocation Group within 30 days of the date of mailing of its decision or supplemental decision. Within five days of receipt of the request, the Allocation Group will mail notification to the petitioner and to all notified districts whether the request is granted or denied. If a timely request for an extension is submitted, the time for the petitioner and any notified district to file a written objection to the decision or supplemental decision of the Allocation Group is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the petitioner and all notified districts to submit a written objection to the decision or supplemental decision of the Allocation Group is further extended to the 60th day after the date of mailing of the decision or supplemental decision.

(c) REVIEW BY APPEALS DIVISION.

- (1) The petitioner or any notified district may appeal the supplemental decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's supplemental decision, or within a period of extension authorized by subdivision (b)(9). Such an objection must state the basis for the objecting district's disagreement with the supplemental decision and include all additional information in its possession that supports its position.
- (2) If a timely objection to its supplemental decision is submitted, the Allocation Group will, within 30 days of receipt of the objection, prepare the file and forward it to the Appeals Division. The petitioner, all notified districts, any other district that would be substantially affected if the petition were granted, and the Sales and Use Tax Department will thereafter be mailed notice of the appeals conference, which will generally be sent at least 45 days prior to the scheduled date of the conference. The Appeals Division shall schedule an appeals conference within 6 months from receipt of the file from the Allocation Group.

(A) Petitioner or any notified district may continue to discuss the dispute with staff of the Sales and Use Tax Department after the dispute is referred to the Appeals Division. If, as a result of such discussions or otherwise, the Sales and Use Tax Department decides the supplemental decision of the Allocation Group was incorrect or that further investigation should be pursued, it shall so notify the Appeals Division, the petitioner, and all notified districts.

(B) If the Department sends notice to the Appeals Division in accordance with the subdivision (c)(2)(A) no later than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will suspend its review and the dispute within 60 days, will be returned to the Department. The Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(C) If the Department sends notice to the Appeals Division in accordance with subdivision (c)(2)(A) less than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will decide whether the dispute should be returned to the Department or remain with the Appeals Division, and notify the parties accordingly. If the dispute is returned to the Department, the Department will thereafter issue a second supplemental decision within 60 days, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(D) Where the Department issues a second supplemental decision in accordance with subdivision (c)(2)(B) or (c)(2)(C), it will send a copy of the decision to the petitioner, any notified district, and any other district that is substantially affected by the second supplemental decision, any of whom may appeal the second supplemental decision by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(9). If an objection to a second supplemental decision is filed by either the petitioner or notified jurisdiction, it will be immediately forwarded to the Appeals Division. An appeals conference shall be scheduled within 90 days of receipt of the objection. If no such timely objection is submitted, the second supplemental decision is final as to the petitioner and all notified districts.

(3) The appeals conference is not an adversarial proceeding, but rather is an informal discussion where the petitioner, any notified districts who wish to participate, and the Sales and Use Tax Department have the opportunity to explain their respective positions regarding the relevant facts and law to the Appeals Division conference holder. To make the conference most productive, each participant should submit all facts, law, argument, and other information in support of its position to the Appeals Division conference holder, and to the other participants, at least 15 days before the date of the appeals conference; however, relevant facts and arguments will be accepted at any time at or before the appeals conference. If, during the appeals conference, a participant requests permission to submit additional written arguments and documentary evidence, the conference holder may grant that participant 45 30 days after the appeals conference, ~~or 30 days with sufficient justification~~, to submit to the conference holder, with copies to all other participants, such additional arguments and evidence. Any other participant at the conference who is in opposition to the requesting participant on the issue(s) covered by the additional submission is allowed 45-30 days to submit to the conference holder, with copies to all other participants, arguments and evidence in response. No request by a participant for further time to submit additional arguments or evidence will be granted without the approval of the Assistant Chief Counsel of the Appeals Division or his or her designee. The Appeals Division on its own initiative may also request, at or after the appeals conference, further submissions from any participant.

(4) Within 90 days after the final submission authorized by subdivision (c)(3), the Appeals Division will issue a written Decision and Recommendation (D&R) setting forth the applicable facts and law and the conclusions of the Appeals Division. The Chief Counsel may allow up to 90-30 additional days to prepare the D&R upon request of the Appeals Division. Both the request and the Chief Counsel's response granting or denying the request for additional time must be in writing and copies provided to the petitioner, all notified districts, and the Sales and Use Tax Department. A copy of the D&R will be mailed to the petitioner, to all notified districts, to any other district that will be substantially affected by the D&R, and to the Sales and Use Tax Department.

(5) The petitioner or any notified district may appeal the D&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R. If no such timely request for Board hearing is submitted, the D&R is final as to the petitioner and all notified jurisdictions.

~~—(6) The petitioner, any notified district, or the Sales and Use Tax Department may also appeal the D&R, or any Supplemental D&R (SD&R), by submitting a written request for reconsideration (RFR) to the Appeals Division before expiration of the time during which a timely request for Board hearing may be submitted, or if a Board hearing has been requested, prior to that hearing. If a district or the Sales and Use Tax Department submits an RFR before the time for requesting a Board hearing has expired, the Appeals Division will issue an SD&R to consider the request, after obtaining whatever additional information or arguments from the parties that it deems appropriate. If an RFR is submitted after a district has requested a Board hearing, the Appeals Division will determine whether it should issue an SD&R in response. A copy of the SD&R issued under this subdivision or under subdivision (c)(7) will be mailed to the petitioner, to all notified districts, to any other district that will be substantially affected by the SD&R, and to the Sales and Use Tax Department. The petitioner or any notified district may appeal the SD&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the SD&R.~~

~~—(7) Whether or not an RFR is submitted, at any time prior to the time the recommendation in the D&R or prior SD&R is acted on by the Department as a final matter or the Board has held an oral hearing on the petition, the Appeals Division may issue an SD&R as it deems necessary to augment, clarify, or correct the information, analysis, or conclusions contained in the D&R or any prior SD&R.~~

~~—(8) If no RFR is submitted under subdivision (c)(6) or request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R or any SD&R, the D&R or SD&R as applicable is final as to the petitioner and all notified districts unless the Appeals Division issues an SD&R under subdivision (c)(7).~~

(d) REVIEW BY BOARD.

(1) The petitioner or any notified district may submit a written request for Board hearing if it does so to the Board Proceedings Division within 60 days of the date of mailing of the D&R ~~or any SD&R~~. Such a request must state the basis for the district's disagreement with the D&R ~~or SD&R~~ as applicable and include all additional information in its possession that supports its position.

(2) If the Board Proceedings Division receives a timely request for hearing under subdivision (d)(1), it will notify the Sales and Use Tax Department, the petitioner, any notified district, any other district that would be substantially affected if the petition were granted, and the taxpayer(s) whose distribution (or nondistribution) are the subject of the petition, that the petition for redistribution of district tax is being scheduled for a Board hearing to determine the proper distribution. The notice of hearing will be issued within 90 days of the request for hearing.

(3) The Sales and Use Tax Department, the petitioner, and all districts notified of the Board hearing pursuant to subdivision (d)(2) are parties and may participate in the Board hearing. The taxpayer is not a party to the Board hearing unless it chooses to actively participate in the hearing process by either filing a brief or making a presentation at the hearing.

(4) Briefs may be submitted for the Board hearing in accordance with California Code of Regulations, title 18, sections 5270 and 5271.

(5) To the extent not inconsistent with this regulation, the hearing will be conducted in accordance with Chapter 5 of the Board of Equalization Rules for Tax Appeals (Cal. Code Regs., tit. 18, § 5510, et seq.). The Board will apply the preponderance of evidence rules set forth in subdivision (b)(2) in reaching its decision and not the burden of proof rules set forth in California Code of Regulations, title 18, section 5541. The Board's final decision on a petition for redistribution exhausts all administrative remedies on the matter for all districts.

(e) LIMITATION PERIOD FOR REDISTRIBUTIONS. For redistributions where the date of knowledge is prior to January 1, 2008, the standard three-year statute of limitations is applicable, based on the date of knowledge. For redistributions where the date of knowledge is on or after January 1, 2008, redistributions shall not include amounts originally distributed earlier than two quarterly periods prior to the quarter of the date of knowledge.

(f) OPERATIVE DATE AND TRANSITION RULES. This regulation is intended to reduce the time required to decide the validity of redistribution petitions and otherwise improve the process for doing so. It is intended to have a neutral impact only on the current dispute over the continuing validity of certain petitions that are governed by prior Regulation 1828 (effective June 17, 2004).

(1) The operative date of this regulation is the date it becomes effective under Section 11343.4 of the Government Code (thirty days after it has been approved by the Office of Administrative Law and forwarded to the Secretary of State) and it shall have no retroactive effect.

(2) Petitions filed prior to the operative date of this regulation, shall be reviewed, appealed and decided in accordance with this regulation as to procedures occurring after that date. All such petitions filed prior to July 1, 2004 and denied by Board Management must perfect any access they may have to a Board Member hearing no later than 60 days after the operative date of this regulation.

**ALTERNATIVE 3.1:
Adopting new regulations with new language**

MuniServices proposes that the Board retire Regulation 1807 and adopt amendments in a new Regulation 1807.1. MuniServices believes this is a clearer way to address potential confusion about operative dates and the prospective effect of the amendments.

Thus, MuniServices, in this alternative, proposes to add only the underlined clause to Regulation 1807 subdivision (g)¹:

Regulation 1807. PETITIONS FOR REALLOCATION OF LOCAL TAX.

(g) OPERATIVE DATE AND TRANSITION RULES. This regulation is intended to reduce the time required to decide the validity of reallocation petitions and otherwise improve the process for doing so. It is intended to have a neutral impact only on the current dispute over the continuing validity of certain petitions that are governed by prior Regulation 1807 (effective February 22, 2003).

(1) The operative date of this regulation is the date it becomes effective under Section 11343.4 of the Government Code (thirty days after it has been approved by the Office of Administrative Law and forwarded to the Secretary of State) and it shall have no retroactive effect.

(2) Petitions filed prior to the operative date of this regulation, shall be reviewed, appealed and decided in accordance with this regulation as to procedures occurring after that date. All such petitions filed prior to January 1, 2003 and denied by Board Management must perfect any access they may have to a Board Member hearing no later than 60 days after the operative date of this regulation.

(3) This Regulation 1807 ceases to be operative on the operative date of Regulation 1807.1.

Then MuniServices, in this Alternative 3.1, proposes that the Board adopt Regulation 1807.1 as set forth beginning on page 2. The text of 1807.1 contains the text of Regulation 1807 with MuniServices' suggested amendments.

¹ Only the relevant subdivision of Regulation 1807 is shown. Other subdivisions are not being amended.

Regulation 1807.1. PETITIONS FOR REALLOCATION OF LOCAL TAX.

(a) DEFINITIONS.

(1) LOCAL TAX. "Local tax" means a local sales and use tax adopted pursuant to Revenue and Taxation Code section 7200, et seq., and administered by the Board.

(2) JURISDICTION. "Jurisdiction" means any city, county, city and county, or redevelopment agency which has adopted a local tax.

(3) PETITION. "Petition" means a request or inquiry from a jurisdiction, other than a submission under Revenue and Taxation Code section 6066.3, for investigation of suspected misallocation of local tax submitted in writing to the Allocation Group of the Sales and Use Tax Department. The petition must contain sufficient factual data to support the probability that local tax has been erroneously allocated and distributed. Sufficient factual data should include, for each business location being questioned:

(A) Taxpayer name, including owner name and fictitious business name or dba (doing business as) designation.

(B) Taxpayer's permit number or a notation stating "No Permit Number."

(C) Complete business address of the taxpayer.

(D) Complete description of taxpayer's business activity or activities.

(E) Specific reasons and evidence why the taxpayer's allocation is questioned. If the petition alleges that a misallocation occurred because a sale location is unregistered, evidence that the questioned location is a selling location or that it is a place of business as defined by California Code of Regulations, title 18, section 1802. If the petition alleges that a misallocation occurred because the tax for a sale shipped from an out-of-state location was actually sales tax and not use tax, evidence that there was participation in the sale by an in-state office of the retailer and that title to the goods passed to the purchaser inside California.

(F) Name, title, and telephone number of the contact person.

(G) The tax reporting periods involved.

"Petition" also includes an appeal by a jurisdiction from a notification from the Local Revenue Allocation Unit of the Sales and Use Tax Department that local taxes previously allocated to it were misallocated and will be reallocated. Such a jurisdiction may object to that notification by submitting a written petition to the Allocation Group within 30 days of the date of mailing of the notification or within a period of extension described below. The petition must include a copy of the notification and specify the reason the jurisdiction disputes it. If a jurisdiction does not submit such a petition within 30 days of the date of mailing of the notification, or within a period of extension, the notification of the Local Revenue Allocation Unit is final as to the jurisdiction so notified.

The jurisdiction may request a 30-day extension to submit a written objection to a notification of misallocation from the Local Revenue Allocation Unit. Such request must provide a reasonable explanation for the requesting jurisdiction's inability to submit its objection within 30 days and must be received by the Local Revenue Allocation Unit within 30 days of the date of mailing of its notification. Within five days of receipt of the request, the Local Revenue Allocation Unit will mail notification to the jurisdiction whether the request is granted or denied. If a timely request for an extension is submitted, the time for the jurisdiction to file a written objection is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the jurisdiction to submit a written objection to the notification of the Local Revenue Allocation Unit is further extended to the 60th day after the date of mailing of the notification of misallocation.

(4) PETITIONER. "Petitioner" is a jurisdiction that has filed a valid petition pursuant to subdivision (a)(3).

(5) DATE OF KNOWLEDGE. Unless an earlier date is operationally documented by the Board, "date of knowledge" is the date on which the Allocation Group receives a valid petition. Where a misallocation that is reasonably covered by the petition is confirmed based on additional facts or evidence supplied by the petitioner or otherwise learned as a direct result of investigating the petition, the date of knowledge is the date on which the Allocation Group received the petition.

(6) SUBSTANTIALLY AFFECTED JURISDICTION. "Substantially affected jurisdiction" is a jurisdiction for which the decision on a petition would result in a decrease to its total allocation of 5 percent or more of its average quarterly allocation (generally determined with reference to the prior four calendar quarters) or of \$50,000 or more, and includes a jurisdiction whose allocation will be decreased solely as the result of a reallocation from the statewide and applicable countywide pools.

(7) NOTIFIED JURISDICTION. "Notified jurisdiction" is a jurisdiction that has been notified as a substantially affected jurisdiction.

(b) REVIEW BY ALLOCATION GROUP.

(1) The Allocation Group will promptly acknowledge a submission intended as a petition.

(2) The Allocation Group will review the petition and issue to the petitioner a written decision to grant or deny the petition, including the basis for that decision. The written decision will also note the date of knowledge, and if other than the date the petition was received, will include the basis for that date. A reallocation will be made if the preponderance of evidence, whether provided by petitioner or obtained by Board staff as part of its investigation of the petition, shows that there was a misallocation. If the preponderance of evidence does not show that a misallocation occurred, the petition will be denied. The Allocation Group has 270 days from the date the Allocation Group receives the petition to conduct its initial investigation of the petition. At the end of that 270-day period, if no decision has been issued, the Allocation Group and petitioner will meet and confer, within 30 days, on the scope and timeline of further investigations, if any, according to rules to be promulgated in the CPPM.

~~(3) If the Allocation Group does not issue a decision within six months of the date it receives a valid petition, At any time after the meet-and-confer meeting in (b)(2),~~ the petitioner may request that the Allocation Group issue its decision without regard to the status of its investigation. ~~Within 90-30 days of receiving such a request, the Allocation Group will issue its decision based on the information in its possession.~~

(4) If the decision of the Allocation Group is that the asserted misallocation did not occur and that the petition should be denied, in whole or in part, the petitioner may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(5) If the decision of the Allocation Group is that a misallocation did occur, it will also mail a copy of its decision to any substantially affected jurisdiction. Any such notified jurisdiction may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(6) The petitioner or any notified jurisdiction may appeal the decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's decision, or within a period of extension authorized by subdivision (b)(910). If no such timely objection is submitted, the decision of the Allocation Group is final as to the petitioner and all notified jurisdictions.

(7) If the petitioner or a notified jurisdiction submits a timely written objection to the decision of the Allocation Group, the Allocation Group will consider the objection and issue a written supplemental decision to grant or deny the objection, including the basis for that decision. The Allocation Group has 90-days to conduct its supplemental investigation of the petition. At the end of the 90-day period, the Allocation Group and petitioner will meet and confer on the scope and timeline of further investigations, if any, according to rules to be promulgated in the CPPM. A copy of the supplemental decision will be mailed to the petitioner, to any notified jurisdiction, and to any other jurisdiction that is substantially affected by the supplemental decision.

(8) At any time after the meet and confer in (b)(7), the petitioner may request that the Allocation Group issue its supplemental decision without regard to the status of its investigation. Within 30 days of receiving such a request, the Allocation Group will issue its decision based on the information in its possession.

~~(89)~~ The petitioner or any notified jurisdiction may appeal the supplemental decision of the Allocation Group by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(910). If no such timely objection is submitted, the supplemental decision of the Allocation Group is final as to the petitioner and all notified jurisdictions.

~~(910)~~ The petitioner or any notified jurisdiction may request a 30-day extension to submit a written objection under subdivision (b)(6) or under subdivision (b)(89), as applicable. Such request must provide a reasonable explanation for the requesting jurisdiction's inability to submit its objection within 30 days, must be copied to all other jurisdictions to whom the Allocation Group mailed a copy of its decision or supplemental decision (to the extent known by the requesting jurisdiction), and must be *received* by the Allocation Group within 30 days of the date of mailing of its decision or supplemental decision. Within five days of receipt of the request, the Allocation Group will mail notification to the petitioner and to all notified jurisdictions whether the request is granted or denied. If a timely request for an extension is submitted, the time for the petitioner and any notified jurisdiction to file a written objection to the decision or supplemental decision of the Allocation Group is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the petitioner and all notified jurisdictions to submit a written objection to the decision or supplemental decision of the Allocation Group is further extended to the 60th day after the date of mailing of the decision or supplemental decision.

(c) REVIEW BY APPEALS DIVISION.

(1) The petitioner or any notified jurisdiction may appeal the supplemental decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's supplemental decision, or within a period of extension authorized by subdivision (b)(910). Such an objection must state the basis for the objecting jurisdiction's disagreement with the supplemental decision and include all additional information in its possession that supports its position.

(2) If a timely objection to its supplemental decision is submitted, the Allocation Group will, within 30 days of receipt of the objection, prepare the file and forward it to the Appeals Division. The petitioner, all notified jurisdictions, any other jurisdiction that would be substantially affected if the petition were granted, and the Sales and Use Tax Department will thereafter be mailed notice of the appeals conference, which will generally be sent at least 45 days prior to the scheduled date of the conference.

(A) Petitioner or any notified jurisdiction may continue to discuss the dispute with staff of the Sales and Use Tax Department after the dispute is referred to the Appeals Division. If, as a result of such discussions or otherwise, the Sales and Use Tax Department decides the supplemental decision of the Allocation Group was incorrect or that further investigation should be pursued, it shall so notify the Appeals Division, the petitioner, and all notified jurisdictions.

(B) If the Department sends notice to the Appeals Division in accordance with the subdivision (c)(2)(A) no later than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will suspend its review and the dispute will be returned to the Department. The Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(C) If the Department sends notice to the Appeals Division in accordance with subdivision (c)(2)(A) less than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will decide whether the dispute should be returned to the Department or remain with the Appeals Division, and notify the parties accordingly. If the dispute is returned to the Department, the Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(D) Where the Department issues a second supplemental decision in accordance with subdivision (c)(2)(B) or (c)(2)(C), it will send a copy of the decision to the petitioner, any notified jurisdiction, and any other jurisdiction that is substantially affected by the second supplemental decision, any of whom may appeal the second supplemental decision by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(910). If no such timely objection is submitted, the second supplemental decision is final as to the petitioner and all notified jurisdictions.

(3) The appeals conference is not an adversarial proceeding, but rather is an informal discussion where the petitioner, any notified jurisdictions who wish to participate, and the Sales and Use Tax Department have the opportunity to explain their respective positions regarding the relevant facts and law to the Appeals Division conference holder. To make the conference most productive, each participant should submit all facts, law, argument, and other information in support of its position to the Appeals Division conference holder, and to the other participants, at least 15 days before the date of the appeals conference; however, relevant facts and arguments will be accepted at any time at or before the appeals conference. If, during the appeals conference, a participant requests permission to submit additional written arguments and documentary evidence, the conference holder may grant that participant ~~45-30~~ 30 days after the appeals conference, ~~or 30 days with sufficient justification~~, to submit to the conference holder, with copies to all other participants, such additional arguments and evidence. Any other participant at the conference who is in opposition to the requesting participant on the issue(s) covered by the additional submission is allowed ~~45-30~~ 30 days to submit to the conference holder, with copies to all other participants, arguments and evidence in response. No request by a participant for further time to submit additional arguments or evidence will be granted without the approval of the Assistant Chief Counsel of the Appeals Division or his or her designee. The Appeals Division on its own initiative may also request, at or after the appeals conference, further submissions from any participant. The Appeals Division will not accept argument or evidence beyond these 30-day deadlines, except upon agreement of all participants.

(4) Within 90 days after the final submission authorized by subdivision (c)(3), the Appeals Division will issue a written Decision and Recommendation (D&R) setting forth the applicable facts and law and the conclusions of the Appeals Division. The Chief Counsel may allow up to 90 additional days to prepare the D&R upon request of the Appeals Division. Both the request and the Chief Counsel's response granting or denying the request for additional time must be in writing and copies provided to the petitioner, all notified jurisdictions, and the Sales and Use Tax Department. A copy of the D&R will be mailed to the petitioner, to all notified jurisdictions, to any other jurisdiction that will be substantially affected by the D&R, and to the Sales and Use Tax Department.

(5) The petitioner or any notified jurisdiction may appeal the D&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R.

(6) The petitioner, any notified jurisdiction, or the Sales and Use Tax Department may also appeal the D&R, or any Supplemental D&R (SD&R), by submitting a written request for reconsideration (RFR) to the Appeals Division before expiration of the time during which a timely request for Board hearing may be submitted, or if a Board hearing has been requested, prior to that hearing. If a jurisdiction or the Sales and Use Tax Department submits an RFR before the time for requesting a Board hearing has expired, the Appeals Division will issue an SD&R to consider the request, after obtaining whatever additional information or arguments from the parties that it deems appropriate. If an RFR is submitted after a jurisdiction has requested a Board hearing, the Appeals Division will determine whether it should issue an SD&R in response. A copy of the SD&R issued under this subdivision or under subdivision (c)(7) will be mailed to the petitioner, to all notified jurisdictions, to any other jurisdiction that will be substantially affected by the SD&R, and to the Sales and Use Tax Department. The petitioner or any notified jurisdiction may appeal the SD&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the SD&R.

(7) Whether or not an RFR is submitted, at any time prior to the time the recommendation in the D&R or prior SD&R is acted on by the Department as a final matter or the Board has held an oral hearing on the petition, the Appeals Division may issue an SD&R as it deems necessary to augment, clarify, or correct the information, analysis, or conclusions contained in the D&R or any prior SD&R.

(8) If no RFR is submitted under subdivision (c)(6) or request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R or any SD&R, the D&R or SD&R as applicable is final as to the petitioner and all notified jurisdictions unless the Appeals Division issues an SD&R under subdivision (c)(7).

(d) REVIEW BY BOARD.

(1) The petitioner or any notified jurisdiction may submit a written request for Board hearing if it does so to the Board Proceedings Division within 60 days of the date of mailing of the D&R or any SD&R. Such a request must state the basis for the jurisdiction's disagreement with the D&R or SD&R as applicable and include all additional information in its possession that supports its position, along with justification why that additional information was not included in the Appeals Conference. Board Members will rule on the admissibility of that additional information no later than 75 days before the date the hearing is set. The Board will promulgate policies regarding the scheduling of these admissibility hearings.

(2) If the Board Proceedings Division receives a timely request for hearing under subdivision (d)(1), it will notify the Sales and Use Tax Department, the petitioner, any notified jurisdiction, any other jurisdiction that would be substantially affected if the petition were granted, and the taxpayer(s) whose allocations are the subject of the petition, that the petition for reallocation of local tax is being scheduled for a Board hearing to determine the proper allocation.

(3) The Sales and Use Tax Department, the petitioner, and all jurisdictions notified of the Board hearing pursuant to subdivision (d)(2) are parties and may participate in the Board hearing. The taxpayer is not a party to the Board hearing unless it chooses to actively participate in the hearing process by either filing a brief or making a presentation at the hearing.

(4) Briefs may be submitted for the Board hearing in accordance with California Code of Regulations, title 18, sections 5270 and 5271.

(5) To the extent not inconsistent with this regulation, the hearing will be conducted in accordance with Chapter 5 of the Board of Equalization Rules for Tax Appeals (Cal. Code Regs., tit. 18, § 5510, et seq.). The Board will apply the preponderance of evidence rules set forth in subdivision (b)(2) in reaching its decision and not the burden of proof rules set forth in California Code of Regulations, title 18, section 5541. The Board's final decision on a petition for reallocation exhausts all administrative remedies on the matter for all jurisdictions.

(e) LIMITATION PERIOD FOR REDISTRIBUTIONS. Redistributions shall not include amounts originally distributed earlier than two quarterly periods prior to the quarter of the date of knowledge.

(f) APPLICATION TO SECTION 6066.3 INQUIRIES. The procedures set forth herein for submitting a petition for reallocation of local tax are separate from those applicable to a submission under Revenue and Taxation Code section 6066.3. If a petition under the procedures set forth herein and a submission under section 6066.3 are both filed for the same alleged improper distribution, only the earliest submission will be processed, with the date of knowledge established under the procedures applicable to that earliest submission. However, the procedures set forth in subdivisions (b), (c), and (d) also apply to appeals from reallocation determinations made under section 6066.3.

(g) OPERATIVE DATE AND TRANSITION RULES. This regulation is intended to reduce the time required to decide the validity of reallocation petitions and otherwise improve the process for doing so. It is intended to have a neutral impact only on the current dispute over the continuing validity of certain petitions that are governed by prior Regulation 1807 (effective February 22, 2003).

(1) The operative date of this regulation is the date it becomes effective under Section 11343.4 of the Government Code (thirty days after it has been approved by the Office of Administrative Law and forwarded to the Secretary of State) and it shall have no retroactive effect.

(2) Petitions filed prior to the operative date of this regulation, shall be reviewed, appealed and decided in accordance with this regulation as to procedures occurring after that date. ~~All such petitions filed prior to January 1, 2003 and denied by Board Management must perfect any access they may have to a Board Member hearing no later than 60 days after the operative date of this regulation.~~

MuniServices would follow the same procedure, in Alternative 3.1, for Regulation 1828.

Thus MuniServices, in this alternative, proposes to add only the underlined clause to Regulation 1828 subdivision (f)²:

Regulation 1828. PETITIONS FOR DISTRIBUTION OR REDISTRIBUTION OF TRANSACTIONS AND USE TAX.

(f) OPERATIVE DATE AND TRANSITION RULES. This regulation is intended to reduce the time required to decide the validity of redistribution petitions and otherwise improve the process for doing so. It is intended to have a neutral impact only on the current dispute over the continuing validity of certain petitions that are governed by prior Regulation 1828 (effective June 17, 2004).

(1) The operative date of this regulation is the date it becomes effective under Section 11343.4 of the Government Code (thirty days after it has been approved by the Office of Administrative Law and forwarded to the Secretary of State) and it shall have no retroactive effect.

(2) Petitions filed prior to the operative date of this regulation, shall be reviewed, appealed and decided in accordance with this regulation as to procedures occurring after that date. All such petitions filed prior to July 1, 2004 and denied by Board Management must perfect any access they may have to a Board Member hearing no later than 60 days after the operative date of this regulation.

(3) This Regulation 1828 ceases to be operative on the operative date of Regulation 1828.1.

Then MuniServices, in this Alternative 3.1, proposes that the Board adopt Regulation 1828.1 as set forth beginning on page 8. The text of 1828.1 contains the text of current Regulation 1828 with MuniServices' suggested amendments.

² Only the relevant subdivision of Regulation 1828 is shown. Other subdivisions are not being amended.

Regulation 1828.1. PETITIONS FOR DISTRIBUTION OR REDISTRIBUTION OF TRANSACTIONS AND USE TAX.

(a) DEFINITIONS.

(1) DISTRICT TAX. "District tax" means a transaction and use tax adopted pursuant to Revenue and Taxation Code section 7251, et seq., or pursuant to Revenue and Taxation Code section 7285, et seq., and administered by the Board.

(2) DISTRICT. "District" means any entity, including a city, county, city and county, or special taxing jurisdiction, which has adopted a district tax.

(3) PETITION. "Petition" means a request or inquiry from a district for investigation of suspected improper distribution or nondistribution of district tax submitted in writing to the Allocation Group of the Sales and Use Tax Department. The petition must contain sufficient factual data to support the probability that district tax has not been distributed or has been erroneously distributed. Sufficient factual data should include, for each business location being questioned:

(A) Taxpayer name, including owner name and fictitious business name or dba (doing business as) designation.

(B) Taxpayer's permit number or a notation stating "No Permit Number."

(C) Complete business address of the taxpayer.

(D) Complete description of taxpayer's business activity or activities.

(E) Specific reasons and evidence why the distribution or nondistribution is questioned, identifying the delivery location or locations of the property the sales of which are at issue. If the petition alleges that the subject transactions are subject to the district's use tax, evidence that the retailer is engaged in business in the district as provided in California Code of Regulations, title 18, section 1827, subdivision (c).

(F) Name, title, and telephone number of the contact person.

(G) The tax reporting periods involved.

"Petition" also includes an appeal by a district from a notification from the Local Revenue Allocation Unit of the Sales and Use Tax Department that district taxes previously allocated to it were misallocated and will be reallocated. Such a district may object to that notification by submitting a written petition to the Allocation Group within 30 days of the date of mailing of the notification or within a period of extension described below. The petition must include a copy of the notification and specify the reason the district disputes it. If a district does not submit such a petition within 30 days of the date of mailing of the notification, or within a period of extension, the notification of the Local Revenue Allocation Unit is final as to the district so notified.

The district may request a 30-day extension to submit a written objection to a notification of misallocation from the Local Revenue Allocation Unit. Such request must provide a reasonable explanation for the requesting district's inability to submit its objection within 30 days and must be received by the Local Revenue Allocation Unit within 30 days of the date of mailing of its notification. Within five days of receipt of the request, the Local Revenue Allocation Unit will mail notification to the district whether the request is granted or denied. If a timely request for extension is submitted, the time for the district to file a written objection is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the district to submit a written objection to the notification of the Local Revenue Allocation Unit is further extended to the 60th day after the date of mailing of the notification of misallocation.

(4) PETITIONER. "Petitioner" is a district that has filed a valid petition pursuant to subdivision (a)(3).

(5) DATE OF KNOWLEDGE. Unless an earlier date is operationally documented by the Board, "date of knowledge" is the date on which the Allocation Group receives a valid petition. Where an error in distribution that is reasonably covered by the petition is confirmed based on additional facts or evidence supplied by the petitioner or otherwise learned as a direct result of investigating the petition, the date of knowledge is the date on which the Allocation Group received the petition.

(6) SUBSTANTIALLY AFFECTED DISTRICT. "Substantially affected district" is a district for which the decision on a petition would result in a decrease to its total distribution of 5 percent or more of its average quarterly distribution (generally determined with reference to the prior four calendar quarters) or of \$50,000 or more.

(7) NOTIFIED DISTRICT. "Notified district" is a district that has been notified as a substantially affected district.

(b) REVIEW BY ALLOCATION GROUP.

(1) The Allocation Group will promptly acknowledge a submission intended as a petition.

(2) The Allocation Group will review the petition and issue to the petitioner a written decision to grant or deny the petition, including the basis for that decision. The written decision will also note the date of knowledge, and if other than the date the petition was received, will include the basis for that date. A redistribution will be made if the preponderance of evidence, whether provided by petitioner or obtained by Board staff as part of its investigation of the petition, shows that there was an error in distribution. If the preponderance of evidence does not show that an error in distribution occurred, the petition will be denied. The Allocation Group has 270 days from the date the Allocation Group receives the petition to conduct its initial investigation of the petition. At the end of the 270-day period, if no decision has been issued, the Allocation Group and petitioner will meet and confer, within 30 days, on the scope and timeline of further investigations, if any, according to rules to be promulgated in the CPPM.

~~(3) If the Allocation Group does not issue a decision within six months of the date it receives a valid petition. At any time after the meet-and-confer meeting in (b)(2),~~ the petitioner may request that the Allocation Group issue its decision without regard to the status of its investigation. Within ~~90~~30 days of receiving such a request, the Allocation Group will issue its decision based on the information in its possession.

(4) If the decision of the Allocation Group is that the asserted error in distribution did not occur and that the petition should be denied, in whole or in part, the petitioner may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(5) If the decision of the Allocation Group is that an error in distribution did occur, it will also mail a copy of its decision to any substantially affected district. Any such notified district may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(6) The petitioner or any notified district may appeal the decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the decision of the Allocation Group is final as to the petitioner and all notified districts.

(7) If the petitioner or a notified district submits a timely written objection to the decision of the Allocation Group, the Allocation Group will consider the objection and issue a written supplemental decision to grant or deny the objection, including the basis for that decision. The Allocation Group has 90 days to conduct its supplemental investigation of the petition. At the end of that 90-day period, the Allocation Group and petitioner will meet and confer on the scope and timeline of further investigations, if any, according to rules to be promulgated in the CPPM. A copy of the supplemental decision will be mailed to the petitioner, to any notified district, and to any other district that is substantially affected by the supplemental decision.

(8) At any time after the meet and confer in (b)(7), the petitioner may request that the Allocation Group issue its supplemental decision without regard to the status of its investigation. Within 30 days of receiving such a request, the Allocation Group will issue its decision based on the information in its possession.

~~(89)~~ The petitioner or any notified district may appeal the supplemental decision of the Allocation Group by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the supplemental decision of the Allocation Group is final as to the petitioner and all notified districts.

~~(910)~~ The petitioner or any notified district may request a 30-day extension to submit a written objection under subdivision (b)(6) or under subdivision (b)(~~89~~), as applicable. Such request must provide a reasonable explanation for the requesting district's inability to submit its objection within 30 days, must be copied to all other districts to whom the Allocation Group mailed a copy of its decision or supplemental decision (to the extent known by the requesting district), and must be *received* by the Allocation Group within 30 days of the date of mailing of its decision or supplemental decision. Within five days of receipt of the request, the Allocation Group will mail notification to the petitioner and to all notified districts whether the request is granted or denied. If a timely request for an extension is submitted, the time for the petitioner and any notified district to file a written objection to the decision or supplemental decision of the Allocation Group is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the petitioner and all notified districts to submit tha written objection to the decision or supplemental decision of the Allocation Group is further extended to the 60th day after the date of mailing of the decision or supplemental decision.

(c) REVIEW BY APPEALS DIVISION.

(1) The petitioner or any notified district may appeal the supplemental decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). Such an objection must state the basis for the objecting district's disagreement with the supplemental decision and include all additional information in its possession that supports its position.

(2) If a timely objection to its supplemental decision is submitted, the Allocation Group will, within 30 days of receipt of the objection, prepare the file and forward it to the Appeals Division. The petitioner, all notified districts, any other district that would be substantially affected if the petition were granted, and the Sales and Use Tax Department will thereafter be mailed notice of the appeals conference, which will generally be sent at least 45 days prior to the scheduled date of the conference.

(A) Petitioner or any notified district may continue to discuss the dispute with staff of the Sales and Use Tax Department after the dispute is referred to the Appeals Division. If, as a result of such discussions or otherwise, the Sales and Use Tax Department decides the supplemental decision of the Allocation Group was incorrect or that further investigation should be pursued, it shall so notify the Appeals Division, the petitioner, and all notified districts.

(B) If the Department sends notice to the Appeals Division in accordance with the subdivision (c)(2)(A) no later than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will suspend its review and the dispute will be returned to the Department. The Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(C) If the Department sends notice to the Appeals Division in accordance with subdivision (c)(2)(A) less than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will decide whether the dispute should be returned to the Department or remain with the Appeals Division, and notify the parties accordingly. If the dispute is returned to the Department, the Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(D) Where the Department issues a second supplemental decision in accordance with subdivision (c)(2)(B) or (c)(2)(C), it will send a copy of the decision to the petitioner, any notified district, and any other district that is substantially affected by the second supplemental decision, any of whom may appeal the second supplemental decision by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(9). If no such timely objection is submitted, the second supplemental decision is final as to the petitioner and all notified districts.

(3) The appeals conference is not an adversarial proceeding, but rather is an informal discussion where the petitioner, any notified districts who wish to participate, and the Sales and Use Tax Department have the opportunity to explain their respective positions regarding the relevant facts and law to the Appeals Division conference holder. To make the conference most productive, each participant should submit all facts, law, argument, and other information in support of its position to the Appeals Division conference holder, and to the other participants, at least 15 days before the date of the appeals conference; however, relevant facts and arguments will be accepted at any time at or before the appeals conference. If, during the appeals conference, a participant requests permission to submit additional written arguments and documentary evidence, the conference holder may grant that participant ~~45~~30 days after the appeals conference, ~~or 30 days with sufficient justification~~, to submit to the conference holder, with copies to all other participants, such additional arguments and evidence. Any other participant at the conference who is in opposition to the requesting participant on the issue(s) covered by the additional submission is allowed ~~45~~30 days to submit to the conference holder, with copies to all other participants, arguments and evidence in response. No request by a participant for further time to submit additional arguments or evidence will be granted without the approval of the Assistant Chief Counsel of the Appeals Division or his or her designee. The Appeals Division on its own initiative may also request, at or after the appeals conference, further submissions from any participant. The Appeals Division will not accept argument or evidence beyond these 30-day deadlines, except upon agreement of all participants.

(4) Within 90 days after the final submission authorized by subdivision (c)(3), the Appeals Division will issue a written Decision and Recommendation (D&R) setting forth the applicable facts and law and the conclusions of the Appeals Division. The Chief Counsel may allow up to 90 additional days to prepare the D&R upon request of the Appeals Division. Both the request and the Chief Counsel's response granting or denying the request for additional time must be in writing and copies provided to the petitioner, all notified districts, and the Sales and Use Tax Department. A copy of the D&R will be mailed to the petitioner, to all notified districts, to any other district that will be substantially affected by the D&R, and to the Sales and Use Tax Department.

(5) The petitioner or any notified district may appeal the D&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R.

(6) The petitioner, any notified district, or the Sales and Use Tax Department may also appeal the D&R, or any Supplemental D&R (SD&R), by submitting a written request for reconsideration (RFR) to the Appeals Division before expiration of the time during which a timely request for Board hearing may be submitted, or if a Board hearing has been requested, prior to that hearing. If a district or the Sales and Use Tax Department submits an RFR before the time for requesting a Board hearing has expired, the Appeals Division will issue an SD&R to consider the request, after obtaining whatever additional information or arguments from the parties that it deems appropriate. If an RFR is submitted after a district has requested a Board hearing, the Appeals Division will determine whether it should issue an SD&R in response. A copy of the SD&R issued under this subdivision or under subdivision (c)(7) will be mailed to the petitioner, to all notified

districts, to any other district that will be substantially affected by the SD&R, and to the Sales and Use Tax Department. The petitioner or any notified district may appeal the SD&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the SD&R.

(7) Whether or not an RFR is submitted, at any time prior to the time the recommendation in the D&R or prior SD&R is acted on by the Department as a final matter or the Board has held an oral hearing on the petition, the Appeals Division may issue an SD&R as it deems necessary to augment, clarify, or correct the information, analysis, or conclusions contained in the D&R or any prior SD&R.

(8) If no RFR is submitted under subdivision (c)(6) or request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R or any SD&R, the D&R or SD&R as applicable is final as to the petitioner and all notified districts unless the Appeals Division issues an SD&R under subdivision (c)(7).

(d) REVIEW BY BOARD.

(1) The petitioner or any notified district may submit a written request for Board hearing if it does so to the Board Proceedings Division within 60 days of the date of mailing of the D&R or any SD&R. Such a request must state the basis for the district's disagreement with the D&R or SD&R as applicable and include all additional information in its possession that supports its position, along with justification why that additional factual information was not included in the Appeals Conference. Board Members will rule on the admissibility of that additional information no later than 75 days before the date the hearing is set. The Board will promulgate policies regarding the scheduling of these admissibility hearings.

(2) If the Board Proceedings Division receives a timely request for hearing under subdivision (d)(1), it will notify the Sales and Use Tax Department, the petitioner, any notified district, any other district that would be substantially affected if the petition were granted, and the taxpayer(s) whose distribution (or nondistribution) are the subject of the petition, that the petition for redistribution of district tax is being scheduled for a Board hearing to determine the proper distribution.

(3) The Sales and Use Tax Department, the petitioner, and all districts notified of the Board hearing pursuant to subdivision (d)(2) are parties and may participate in the Board hearing. The taxpayer is not a party to the Board hearing unless it chooses to actively participate in the hearing process by either filing a brief or making a presentation at the hearing.

(4) Briefs may be submitted for the Board hearing in accordance with California Code of Regulations, title 18, sections 5270 and 5271.

(5) To the extent not inconsistent with this regulation, the hearing will be conducted in accordance with Chapter 5 of the Board of Equalization Rules for Tax Appeals (Cal. Code Regs., tit. 18, § 5510, et seq.). The Board will apply the preponderance of evidence rules set forth in subdivision (b)(2) in reaching its decision and not the burden of proof rules set forth in California Code of Regulations, title 18, section 5541. The Board's final decision on a petition for redistribution exhausts all administrative remedies on the matter for all districts.

(e) LIMITATION PERIOD FOR REDISTRIBUTIONS. For redistributions where the date of knowledge is prior to January 1, 2008, the standard three-year statute of limitations is applicable, based on the date of knowledge. For redistributions where the date of knowledge is on or after January 1, 2008, redistributions shall not include amounts originally distributed earlier than two quarterly periods prior to the quarter of the date of knowledge.

(f) OPERATIVE DATE AND TRANSITION RULES. This regulation is intended to reduce the time required to decide the validity of redistribution petitions and otherwise improve the process for doing so. It is intended to have a neutral impact only on the current dispute over the continuing validity of certain petitions that are governed by prior Regulation 1828 (effective June 17, 2004).

(1) The operative date of this regulation is the date it becomes effective under Section 11343.4 of the Government Code (thirty days after it has been approved by the Office of Administrative Law and forwarded to the Secretary of State) and it shall have no retroactive effect.

(2) Petitions filed prior to the operative date of this regulation, shall be reviewed, appealed and decided in accordance with this regulation as to procedures occurring after that date. ~~All such petitions filed prior to July 1, 2004 and denied by Board Management must perfect any access they may have to a Board Member hearing no later than 60 days after the operative date of this regulation.~~

ALTERNATIVE 3.2:

As an alternative to Alternative 3.1, MuniServices proposes amendments to subdivisions (g) and (f) of the existing Regulations 1807 and 1828 to make the proposed amendments prospective. The following text contains all of MuniServices' suggested amendments for Regulations 1807 and 1828.

Regulation 1807. PETITIONS FOR REALLOCATION OF LOCAL TAX.

(a) DEFINITIONS.

(1) LOCAL TAX. "Local tax" means a local sales and use tax adopted pursuant to Revenue and Taxation Code section 7200, et seq., and administered by the Board.

(2) JURISDICTION. "Jurisdiction" means any city, county, city and county, or redevelopment agency which has adopted a local tax.

(3) PETITION. "Petition" means a request or inquiry from a jurisdiction, other than a submission under Revenue and Taxation Code section 6066.3, for investigation of suspected misallocation of local tax submitted in writing to the Allocation Group of the Sales and Use Tax Department. The petition must contain sufficient factual data to support the probability that local tax has been erroneously allocated and distributed. Sufficient factual data should include, for each business location being questioned:

(A) Taxpayer name, including owner name and fictitious business name or dba (doing business as) designation.

(B) Taxpayer's permit number or a notation stating "No Permit Number."

(C) Complete business address of the taxpayer.

(D) Complete description of taxpayer's business activity or activities.

(E) Specific reasons and evidence why the taxpayer's allocation is questioned. If the petition alleges that a misallocation occurred because a sale location is unregistered, evidence that the questioned location is a selling location or that it is a place of business as defined by California Code of Regulations, title 18, section 1802. If the petition alleges that a misallocation occurred because the tax for a sale shipped from an out-of-state location was actually sales tax and not use tax, evidence that there was participation in the sale by an in-state office of the retailer and that title to the goods passed to the purchaser inside California.

(F) Name, title, and telephone number of the contact person.

(G) The tax reporting periods involved.

"Petition" also includes an appeal by a jurisdiction from a notification from the Local Revenue Allocation Unit of the Sales and Use Tax Department that local taxes previously allocated to it were misallocated and will be reallocated. Such a jurisdiction may object to that notification by submitting a written petition to the Allocation Group within 30 days of the date of mailing of the notification or within a period of extension described below. The petition must include a copy of the notification and specify the reason the jurisdiction disputes it. If a jurisdiction does not submit such a petition within 30 days of the date of mailing of the notification, or within a period of extension, the notification of the Local Revenue Allocation Unit is final as to the jurisdiction so notified.

The jurisdiction may request a 30-day extension to submit a written objection to a notification of misallocation from the Local Revenue Allocation Unit. Such request must provide a reasonable explanation for the requesting jurisdiction's inability to submit its objection within 30 days and must be received by the Local Revenue Allocation Unit within 30 days of the date of mailing of its notification. Within five days of receipt of the request, the Local Revenue Allocation Unit will mail notification to the jurisdiction whether the request is granted or denied. If a timely request for an extension is submitted, the time for the jurisdiction to file a written objection is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the jurisdiction to submit a written objection to the notification of the Local Revenue Allocation Unit is further extended to the 60th day after the date of mailing of the notification of misallocation.

(4) PETITIONER. "Petitioner" is a jurisdiction that has filed a valid petition pursuant to subdivision (a)(3).

(5) DATE OF KNOWLEDGE. Unless an earlier date is operationally documented by the Board, "date of knowledge" is the date on which the Allocation Group receives a valid petition. Where a misallocation that is reasonably covered by

the petition is confirmed based on additional facts or evidence supplied by the petitioner or otherwise learned as a direct result of investigating the petition, the date of knowledge is the date on which the Allocation Group received the petition.

(6) **SUBSTANTIALLY AFFECTED JURISDICTION.** "Substantially affected jurisdiction" is a jurisdiction for which the decision on a petition would result in a decrease to its total allocation of 5 percent or more of its average quarterly allocation (generally determined with reference to the prior four calendar quarters) or of \$50,000 or more, and includes a jurisdiction whose allocation will be decreased solely as the result of a reallocation from the statewide and applicable countywide pools.

(7) **NOTIFIED JURISDICTION.** "Notified jurisdiction" is a jurisdiction that has been notified as a substantially affected jurisdiction.

(b) REVIEW BY ALLOCATION GROUP.

(1) The Allocation Group will promptly acknowledge a submission intended as a petition.

(2) The Allocation Group will review the petition and issue to the petitioner a written decision to grant or deny the petition, including the basis for that decision. The written decision will also note the date of knowledge, and if other than the date the petition was received, will include the basis for that date. A reallocation will be made if the preponderance of evidence, whether provided by petitioner or obtained by Board staff as part of its investigation of the petition, shows that there was a misallocation. If the preponderance of evidence does not show that a misallocation occurred, the petition will be denied. The Allocation Group has 270 days from the date the Allocation Group receives the petition to conduct its initial investigation of the petition. At the end of that 270-day period, if no decision has been issued, the Allocation Group and petitioner will meet and confer, within 30 days, on the scope and timeline of further investigations, if any, according to rules to be promulgated in the CPPM.

~~(3) If the Allocation Group does not issue a decision within six months of the date it receives a valid petition, At any time after the meet-and-confer meeting in (b)(2),~~ the petitioner may request that the Allocation Group issue its decision without regard to the status of its investigation. ~~Within 90-30 days of receiving such a request, the Allocation Group will issue its decision based on the information in its possession.~~

(4) If the decision of the Allocation Group is that the asserted misallocation did not occur and that the petition should be denied, in whole or in part, the petitioner may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(5) If the decision of the Allocation Group is that a misallocation did occur, it will also mail a copy of its decision to any substantially affected jurisdiction. Any such notified jurisdiction may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(6) The petitioner or any notified jurisdiction may appeal the decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's decision, or within a period of extension authorized by subdivision (b)(910). If no such timely objection is submitted, the decision of the Allocation Group is final as to the petitioner and all notified jurisdictions.

(7) If the petitioner or a notified jurisdiction submits a timely written objection to the decision of the Allocation Group, the Allocation Group will consider the objection and issue a written supplemental decision to grant or deny the objection, including the basis for that decision. The Allocation Group has 90-days to conduct its supplemental investigation of the petition. At the end of the 90-day period, the Allocation Group and petitioner will meet and confer on the scope and timeline of further investigations, if any, according to rules to be promulgated in the CPPM. A copy of the supplemental decision will be mailed to the petitioner, to any notified jurisdiction, and to any other jurisdiction that is substantially affected by the supplemental decision.

~~(8) At any time after the meet and confer in (b)(7), the petitioner may request that the Allocation Group issue its supplemental decision without regard to the status of its investigation. Within 30 days of receiving such a request, the Allocation Group will issue its decision based on the information in its possession.~~

~~(89)~~ The petitioner or any notified jurisdiction may appeal the supplemental decision of the Allocation Group by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(910). If no such timely objection is submitted, the supplemental decision of the Allocation Group is final as to the petitioner and all notified jurisdictions.

~~(910)~~ The petitioner or any notified jurisdiction may request a 30-day extension to submit a written objection under subdivision (b)(6) or under subdivision (b)(89), as applicable. Such request must provide a reasonable explanation for the requesting jurisdiction's inability to submit its objection within 30 days, must be copied to all other jurisdictions to whom the Allocation Group mailed a copy of its decision or supplemental decision (to the extent known by the requesting jurisdiction), and must be *received* by the Allocation Group within 30 days of the date of mailing of its decision or supplemental decision. Within five days of receipt of the request, the Allocation Group will mail notification to the

petitioner and to all notified jurisdictions whether the request is granted or denied. If a timely request for an extension is submitted, the time for the petitioner and any notified jurisdiction to file a written objection to the decision or supplemental decision of the Allocation Group is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the petitioner and all notified jurisdictions to submit a written objection to the decision or supplemental decision of the Allocation Group is further extended to the 60th day after the date of mailing of the decision or supplemental decision.

(c) REVIEW BY APPEALS DIVISION.

(1) The petitioner or any notified jurisdiction may appeal the supplemental decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's supplemental decision, or within a period of extension authorized by subdivision (b)(910). Such an objection must state the basis for the objecting jurisdiction's disagreement with the supplemental decision and include all additional information in its possession that supports its position.

(2) If a timely objection to its supplemental decision is submitted, the Allocation Group will, within 30 days of receipt of the objection, prepare the file and forward it to the Appeals Division. The petitioner, all notified jurisdictions, any other jurisdiction that would be substantially affected if the petition were granted, and the Sales and Use Tax Department will thereafter be mailed notice of the appeals conference, which will generally be sent at least 45 days prior to the scheduled date of the conference.

(A) Petitioner or any notified jurisdiction may continue to discuss the dispute with staff of the Sales and Use Tax Department after the dispute is referred to the Appeals Division. If, as a result of such discussions or otherwise, the Sales and Use Tax Department decides the supplemental decision of the Allocation Group was incorrect or that further investigation should be pursued, it shall so notify the Appeals Division, the petitioner, and all notified jurisdictions.

(B) If the Department sends notice to the Appeals Division in accordance with the subdivision (c)(2)(A) no later than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will suspend its review and the dispute will be returned to the Department. The Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(C) If the Department sends notice to the Appeals Division in accordance with subdivision (c)(2)(A) less than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will decide whether the dispute should be returned to the Department or remain with the Appeals Division, and notify the parties accordingly. If the dispute is returned to the Department, the Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(D) Where the Department issues a second supplemental decision in accordance with subdivision (c)(2)(B) or (c)(2)(C), it will send a copy of the decision to the petitioner, any notified jurisdiction, and any other jurisdiction that is substantially affected by the second supplemental decision, any of whom may appeal the second supplemental decision by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(910). If no such timely objection is submitted, the second supplemental decision is final as to the petitioner and all notified jurisdictions.

(3) The appeals conference is not an adversarial proceeding, but rather is an informal discussion where the petitioner, any notified jurisdictions who wish to participate, and the Sales and Use Tax Department have the opportunity to explain their respective positions regarding the relevant facts and law to the Appeals Division conference holder. To make the conference most productive, each participant should submit all facts, law, argument, and other information in support of its position to the Appeals Division conference holder, and to the other participants, at least 15 days before the date of the appeals conference; however, relevant facts and arguments will be accepted at any time at or before the appeals conference. If, during the appeals conference, a participant requests permission to submit additional written arguments and documentary evidence, the conference holder may grant that participant 45-30 days after the appeals conference, or 30 days with sufficient justification, to submit to the conference holder, with copies to all other participants, such additional arguments and evidence. Any other participant at the conference who is in opposition to the requesting participant on the issue(s) covered by the additional submission is allowed 45-30 days to submit to the conference holder, with copies to all other participants, arguments and evidence in response. No request by a participant for further time to submit additional arguments or evidence will be granted without the approval of the Assistant Chief Counsel of the Appeals Division or his or her designee. The Appeals Division on its own initiative may also request, at or after the appeals conference, further submissions from any participant. The Appeals Division will not accept argument or evidence beyond these 30-day deadlines, except upon agreement of all participants.

(4) Within 90 days after the final submission authorized by subdivision (c)(3), the Appeals Division will issue a written Decision and Recommendation (D&R) setting forth the applicable facts and law and the conclusions of the Appeals Division. The Chief Counsel may allow up to 90 additional days to prepare the D&R upon request of the Appeals

Division. Both the request and the Chief Counsel's response granting or denying the request for additional time must be in writing and copies provided to the petitioner, all notified jurisdictions, and the Sales and Use Tax Department. A copy of the D&R will be mailed to the petitioner, to all notified jurisdictions, to any other jurisdiction that will be substantially affected by the D&R, and to the Sales and Use Tax Department.

(5) The petitioner or any notified jurisdiction may appeal the D&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R.

(6) The petitioner, any notified jurisdiction, or the Sales and Use Tax Department may also appeal the D&R, or any Supplemental D&R (SD&R), by submitting a written request for reconsideration (RFR) to the Appeals Division before expiration of the time during which a timely request for Board hearing may be submitted, or if a Board hearing has been requested, prior to that hearing. If a jurisdiction or the Sales and Use Tax Department submits an RFR before the time for requesting a Board hearing has expired, the Appeals Division will issue an SD&R to consider the request, after obtaining whatever additional information or arguments from the parties that it deems appropriate. If an RFR is submitted after a jurisdiction has requested a Board hearing, the Appeals Division will determine whether it should issue an SD&R in response. A copy of the SD&R issued under this subdivision or under subdivision (c)(7) will be mailed to the petitioner, to all notified jurisdictions, to any other jurisdiction that will be substantially affected by the SD&R, and to the Sales and Use Tax Department. The petitioner or any notified jurisdiction may appeal the SD&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the SD&R.

(7) Whether or not an RFR is submitted, at any time prior to the time the recommendation in the D&R or prior SD&R is acted on by the Department as a final matter or the Board has held an oral hearing on the petition, the Appeals Division may issue an SD&R as it deems necessary to augment, clarify, or correct the information, analysis, or conclusions contained in the D&R or any prior SD&R.

(8) If no RFR is submitted under subdivision (c)(6) or request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R or any SD&R, the D&R or SD&R as applicable is final as to the petitioner and all notified jurisdictions unless the Appeals Division issues an SD&R under subdivision (c)(7).

(d) REVIEW BY BOARD.

(1) The petitioner or any notified jurisdiction may submit a written request for Board hearing if it does so to the Board Proceedings Division within 60 days of the date of mailing of the D&R or any SD&R. Such a request must state the basis for the jurisdiction's disagreement with the D&R or SD&R as applicable and include all additional information in its possession that supports its position, along with justification why that additional information was not included in the Appeals Conference. Board Members will rule on the admissibility of that additional information no later than 75 days before the date the hearing is set. The Board will promulgate policies regarding the scheduling of these admissibility hearings.

(2) If the Board Proceedings Division receives a timely request for hearing under subdivision (d)(1), it will notify the Sales and Use Tax Department, the petitioner, any notified jurisdiction, any other jurisdiction that would be substantially affected if the petition were granted, and the taxpayer(s) whose allocations are the subject of the petition, that the petition for reallocation of local tax is being scheduled for a Board hearing to determine the proper allocation.

(3) The Sales and Use Tax Department, the petitioner, and all jurisdictions notified of the Board hearing pursuant to subdivision (d)(2) are parties and may participate in the Board hearing. The taxpayer is not a party to the Board hearing unless it chooses to actively participate in the hearing process by either filing a brief or making a presentation at the hearing.

(4) Briefs may be submitted for the Board hearing in accordance with California Code of Regulations, title 18, sections 5270 and 5271.

(5) To the extent not inconsistent with this regulation, the hearing will be conducted in accordance with Chapter 5 of the Board of Equalization Rules for Tax Appeals (Cal. Code Regs., tit. 18, § 5510, et seq.). The Board will apply the preponderance of evidence rules set forth in subdivision (b)(2) in reaching its decision and not the burden of proof rules set forth in California Code of Regulations, title 18, section 5541. The Board's final decision on a petition for reallocation exhausts all administrative remedies on the matter for all jurisdictions.

(e) LIMITATION PERIOD FOR REDISTRIBUTIONS. Redistributions shall not include amounts originally distributed earlier than two quarterly periods prior to the quarter of the date of knowledge.

(f) APPLICATION TO SECTION 6066.3 INQUIRIES. The procedures set forth herein for submitting a petition for reallocation of local tax are separate from those applicable to a submission under Revenue and Taxation Code section 6066.3. If a petition under the procedures set forth herein and a submission under section 6066.3 are both filed for the same alleged improper distribution, only the earliest submission will be processed, with the date of knowledge established under the procedures applicable to that earliest submission. However, the procedures set forth in subdivisions (b), (c), and (d) also apply to appeals from reallocation determinations made under section 6066.3.

(g) OPERATIVE DATE AND TRANSITION RULES. This regulation is intended to reduce the time required to decide the validity of reallocation petitions and otherwise improve the process for doing so. It is intended to have a neutral impact only on the current dispute over the continuing validity of certain petitions that are governed by prior Regulation 1807 (effective February 22, 2003).

(1) The operative date of this regulation is the date it becomes effective under Section 11343.4 of the Government Code (thirty days after it has been approved by the Office of Administrative Law and forwarded to the Secretary of State) and it shall have no retroactive effect.

(2) Petitions filed prior to the operative date of this regulation, shall be reviewed, appealed, and decided in accordance with this regulation as to procedures occurring after that date. All such petitions filed prior to January 1, 2003 and denied by Board Management must have perfected any access they may have had to a Board Member hearing no later than 60 days after September 10, 2008, the operative date of this regulation.

(3) The amendments to this regulation adopted by the Board on or about [insert adoption date] have no retroactive effect.

Regulation 1828. PETITIONS FOR DISTRIBUTION OR REDISTRIBUTION OF TRANSACTIONS AND USE TAX.

(a) DEFINITIONS.

(1) DISTRICT TAX. "District tax" means a transaction and use tax adopted pursuant to Revenue and Taxation Code section 7251, et seq., or pursuant to Revenue and Taxation Code section 7285, et seq., and administered by the Board.

(2) DISTRICT. "District" means any entity, including a city, county, city and county, or special taxing jurisdiction, which has adopted a district tax.

(3) PETITION. "Petition" means a request or inquiry from a district for investigation of suspected improper distribution or nondistribution of district tax submitted in writing to the Allocation Group of the Sales and Use Tax Department. The petition must contain sufficient factual data to support the probability that district tax has not been distributed or has been erroneously distributed. Sufficient factual data should include, for each business location being questioned:

(A) Taxpayer name, including owner name and fictitious business name or dba (doing business as) designation.

(B) Taxpayer's permit number or a notation stating "No Permit Number."

(C) Complete business address of the taxpayer.

(D) Complete description of taxpayer's business activity or activities.

(E) Specific reasons and evidence why the distribution or nondistribution is questioned, identifying the delivery location or locations of the property the sales of which are at issue. If the petition alleges that the subject transactions are subject to the district's use tax, evidence that the retailer is engaged in business in the district as provided in California Code of Regulations, title 18, section 1827, subdivision (c).

(F) Name, title, and telephone number of the contact person.

(G) The tax reporting periods involved.

"Petition" also includes an appeal by a district from a notification from the Local Revenue Allocation Unit of the Sales and Use Tax Department that district taxes previously allocated to it were misallocated and will be reallocated. Such a district may object to that notification by submitting a written petition to the Allocation Group within 30 days of the date of mailing of the notification or within a period of extension described below. The petition must include a copy of the notification and specify the reason the district disputes it. If a district does not submit such a petition within 30 days of the date of mailing of the notification, or within a period of extension, the notification of the Local Revenue Allocation Unit is final as to the district so notified.

The district may request a 30-day extension to submit a written objection to a notification of misallocation from the Local Revenue Allocation Unit. Such request must provide a reasonable explanation for the requesting district's inability to submit its objection within 30 days and must be received by the Local Revenue Allocation Unit within 30 days of the date of mailing of its notification. Within five days of receipt of the request, the Local Revenue Allocation Unit will mail notification to the district whether the request is granted or denied. If a timely request for extension is submitted, the time for the district to file a written objection is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the district to submit a written objection to the notification of the Local Revenue Allocation Unit is further extended to the 60th day after the date of mailing of the notification of misallocation.

(4) PETITIONER. "Petitioner" is a district that has filed a valid petition pursuant to subdivision (a)(3).

(5) DATE OF KNOWLEDGE. Unless an earlier date is operationally documented by the Board, "date of knowledge" is the date on which the Allocation Group receives a valid petition. Where an error in distribution that is reasonably covered by the petition is confirmed based on additional facts or evidence supplied by the petitioner or otherwise learned as a direct result of investigating the petition, the date of knowledge is the date on which the Allocation Group received the petition.

(6) SUBSTANTIALLY AFFECTED DISTRICT. "Substantially affected district" is a district for which the decision on a petition would result in a decrease to its total distribution of 5 percent or more of its average quarterly distribution (generally determined with reference to the prior four calendar quarters) or of \$50,000 or more.

(7) NOTIFIED DISTRICT. "Notified district" is a district that has been notified as a substantially affected district.

(b) REVIEW BY ALLOCATION GROUP.

(1) The Allocation Group will promptly acknowledge a submission intended as a petition.

(2) The Allocation Group will review the petition and issue to the petitioner a written decision to grant or deny the petition, including the basis for that decision. The written decision will also note the date of knowledge, and if other than the date the petition was received, will include the basis for that date. A redistribution will be made if the preponderance of evidence, whether provided by petitioner or obtained by Board staff as part of its investigation of the petition, shows that there was an error in distribution. If the preponderance of evidence does not show that an error in distribution occurred, the petition will be denied. The Allocation Group has 270 days from the date the Allocation Group receives the petition to conduct its initial investigation of the petition. At the end of the 270-day period, if no decision has been issued, the Allocation Group and petitioner will meet and confer, within 30 days, on the scope and timeline of further investigations, if any, according to rules to be promulgated in the CPPM.

~~(3) If the Allocation Group does not issue a decision within six months of the date it receives a valid petition. At any time after the meet-and-confer meeting in (b)(2), the petitioner may request that the Allocation Group issue its decision without regard to the status of its investigation. Within 9030 days of receiving such a request, the Allocation Group will issue its decision based on the information in its possession.~~

(4) If the decision of the Allocation Group is that the asserted error in distribution did not occur and that the petition should be denied, in whole or in part, the petitioner may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(5) If the decision of the Allocation Group is that an error in distribution did occur, it will also mail a copy of its decision to any substantially affected district. Any such notified district may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(6) The petitioner or any notified district may appeal the decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's decision, or within a period of extension authorized by subdivision (b)(910). If no such timely objection is submitted, the decision of the Allocation Group is final as to the petitioner and all notified districts.

(7) If the petitioner or a notified district submits a timely written objection to the decision of the Allocation Group, the Allocation Group will consider the objection and issue a written supplemental decision to grant or deny the objection, including the basis for that decision. The Allocation Group has 90 days to conduct its supplemental investigation of the petition. At the end of that 90-day period, the Allocation Group and petitioner will meet and confer on the scope and timeline of further investigations, if any, according to rules to be promulgated in the CPPM. A copy of the supplemental decision will be mailed to the petitioner, to any notified district, and to any other district that is substantially affected by the supplemental decision.

(8) At any time after the meet and confer in (b)(7), the petitioner may request that the Allocation Group issue its supplemental decision without regard to the status of its investigation. Within 30 days of receiving such a request, the Allocation Group will issue its decision based on the information in its possession.

~~(89)~~ The petitioner or any notified district may appeal the supplemental decision of the Allocation Group by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(910). If no such timely objection is submitted, the supplemental decision of the Allocation Group is final as to the petitioner and all notified districts.

~~(910)~~ The petitioner or any notified district may request a 30-day extension to submit a written objection under subdivision (b)(6) or under subdivision (b)(89), as applicable. Such request must provide a reasonable explanation for the requesting district's inability to submit its objection within 30 days, must be copied to all other districts to whom the Allocation Group mailed a copy of its decision or supplemental decision (to the extent known by the requesting district), and must be received by the Allocation Group within 30 days of the date of mailing of its decision or supplemental decision. Within five days of receipt of the request, the Allocation Group will mail notification to the petitioner and to all notified districts whether the request is granted or denied. If a timely request for an extension is submitted, the time for the petitioner and any notified district to file a written objection to the decision or supplemental decision of the Allocation Group is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the petitioner and all notified districts to submit a written objection to the decision or supplemental decision of the Allocation Group is further extended to the 60th day after the date of mailing of the decision or supplemental decision.

(c) REVIEW BY APPEALS DIVISION.

(1) The petitioner or any notified district may appeal the supplemental decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's supplemental decision, or within a period of extension authorized by subdivision (b)(910). Such an objection must state the basis for the objecting district's disagreement with the supplemental decision and include all additional information in its possession that supports its position.

(2) If a timely objection to its supplemental decision is submitted, the Allocation Group will, within 30 days of receipt of the objection, prepare the file and forward it to the Appeals Division. The petitioner, all notified districts, any other district that would be substantially affected if the petition were granted, and the Sales and Use Tax Department will thereafter be mailed notice of the appeals conference, which will generally be sent at least 45 days prior to the scheduled date of the conference.

(A) Petitioner or any notified district may continue to discuss the dispute with staff of the Sales and Use Tax Department after the dispute is referred to the Appeals Division. If, as a result of such discussions or otherwise, the Sales and Use Tax Department decides the supplemental decision of the Allocation Group was incorrect or that further investigation should be pursued, it shall so notify the Appeals Division, the petitioner, and all notified districts.

(B) If the Department sends notice to the Appeals Division in accordance with the subdivision (c)(2)(A) no later than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will suspend its review and the dispute will be returned to the Department. The Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(C) If the Department sends notice to the Appeals Division in accordance with subdivision (c)(2)(A) less than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will decide whether the dispute should be returned to the Department or remain with the Appeals Division, and notify the parties accordingly. If the dispute is returned to the Department, the Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(D) Where the Department issues a second supplemental decision in accordance with subdivision (c)(2)(B) or (c)(2)(C), it will send a copy of the decision to the petitioner, any notified district, and any other district that is substantially affected by the second supplemental decision, any of whom may appeal the second supplemental decision by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(9). If no such timely objection is submitted, the second supplemental decision is final as to the petitioner and all notified districts.

(3) The appeals conference is not an adversarial proceeding, but rather is an informal discussion where the petitioner, any notified districts who wish to participate, and the Sales and Use Tax Department have the opportunity to explain their respective positions regarding the relevant facts and law to the Appeals Division conference holder. To make the conference most productive, each participant should submit all facts, law, argument, and other information in support of its position to the Appeals Division conference holder, and to the other participants, at least 15 days before the date of the appeals conference; however, relevant facts and arguments will be accepted at any time at or before the appeals conference. If, during the appeals conference, a participant requests permission to submit additional written arguments and documentary evidence, the conference holder may grant that participant ~~45~~30 days after the appeals conference, ~~or 30 days with sufficient justification~~, to submit to the conference holder, with copies to all other participants, such additional arguments and evidence. Any other participant at the conference who is in opposition to the requesting participant on the issue(s) covered by the additional submission is allowed ~~45-30~~ days to submit to the conference holder, with copies to all other participants, arguments and evidence in response. No request by a participant for further time to submit additional arguments or evidence will be granted without the approval of the Assistant Chief Counsel of the Appeals Division or his or her designee. The Appeals Division on its own initiative may also request, at or after the appeals conference, further submissions from any participant. The Appeals Division will not accept argument or evidence beyond these 30-day deadlines, except upon agreement of all participants.

(4) Within 90 days after the final submission authorized by subdivision (c)(3), the Appeals Division will issue a written Decision and Recommendation (D&R) setting forth the applicable facts and law and the conclusions of the Appeals Division. The Chief Counsel may allow up to 90 additional days to prepare the D&R upon request of the Appeals Division. Both the request and the Chief Counsel's response granting or denying the request for additional time must be in writing and copies provided to the petitioner, all notified districts, and the Sales and Use Tax Department. A copy of the D&R will be mailed to the petitioner, to all notified districts, to any other district that will be substantially affected by the D&R, and to the Sales and Use Tax Department.

(5) The petitioner or any notified district may appeal the D&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R.

(6) The petitioner, any notified district, or the Sales and Use Tax Department may also appeal the D&R, or any Supplemental D&R (SD&R), by submitting a written request for reconsideration (RFR) to the Appeals Division before expiration of the time during which a timely request for Board hearing may be submitted, or if a Board hearing has been requested, prior to that hearing. If a district or the Sales and Use Tax Department submits an RFR before the time for requesting a Board hearing has expired, the Appeals Division will issue an SD&R to consider the request, after obtaining whatever additional information or arguments from the parties that it deems appropriate. If an RFR is submitted after a district has requested a Board hearing, the Appeals Division will determine whether it should issue an SD&R in response. A copy of the SD&R issued under this subdivision or under subdivision (c)(7) will be mailed to the petitioner, to all notified

districts, to any other district that will be substantially affected by the SD&R, and to the Sales and Use Tax Department. The petitioner or any notified district may appeal the SD&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the SD&R.

(7) Whether or not an RFR is submitted, at any time prior to the time the recommendation in the D&R or prior SD&R is acted on by the Department as a final matter or the Board has held an oral hearing on the petition, the Appeals Division may issue an SD&R as it deems necessary to augment, clarify, or correct the information, analysis, or conclusions contained in the D&R or any prior SD&R.

(8) If no RFR is submitted under subdivision (c)(6) or request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R or any SD&R, the D&R or SD&R as applicable is final as to the petitioner and all notified districts unless the Appeals Division issues an SD&R under subdivision (c)(7).

(d) REVIEW BY BOARD.

(1) The petitioner or any notified district may submit a written request for Board hearing if it does so to the Board Proceedings Division within 60 days of the date of mailing of the D&R or any SD&R. Such a request must state the basis for the district's disagreement with the D&R or SD&R as applicable and include all additional information in its possession that supports its position, along with justification why that additional factual information was not included in the Appeals Conference. Board Members will rule on the admissibility of that additional information no later than 75 days before the date the hearing is set. The Board will promulgate policies regarding the scheduling of these admissibility hearings.

(2) If the Board Proceedings Division receives a timely request for hearing under subdivision (d)(1), it will notify the Sales and Use Tax Department, the petitioner, any notified district, any other district that would be substantially affected if the petition were granted, and the taxpayer(s) whose distribution (or nondistribution) are the subject of the petition, that the petition for redistribution of district tax is being scheduled for a Board hearing to determine the proper distribution.

(3) The Sales and Use Tax Department, the petitioner, and all districts notified of the Board hearing pursuant to subdivision (d)(2) are parties and may participate in the Board hearing. The taxpayer is not a party to the Board hearing unless it chooses to actively participate in the hearing process by either filing a brief or making a presentation at the hearing.

(4) Briefs may be submitted for the Board hearing in accordance with California Code of Regulations, title 18, sections 5270 and 5271.

(5) To the extent not inconsistent with this regulation, the hearing will be conducted in accordance with Chapter 5 of the Board of Equalization Rules for Tax Appeals (Cal. Code Regs., tit. 18, § 5510, et seq.). The Board will apply the preponderance of evidence rules set forth in subdivision (b)(2) in reaching its decision and not the burden of proof rules set forth in California Code of Regulations, title 18, section 5541. The Board's final decision on a petition for redistribution exhausts all administrative remedies on the matter for all districts.

(e) LIMITATION PERIOD FOR REDISTRIBUTIONS. For redistributions where the date of knowledge is prior to January 1, 2008, the standard three-year statute of limitations is applicable, based on the date of knowledge. For redistributions where the date of knowledge is on or after January 1, 2008, redistributions shall not include amounts originally distributed earlier than two quarterly periods prior to the quarter of the date of knowledge.

(f) OPERATIVE DATE AND TRANSITION RULES. This regulation is intended to reduce the time required to decide the validity of redistribution petitions and otherwise improve the process for doing so. It is intended to have a neutral impact only on the current dispute over the continuing validity of certain petitions that are governed by prior Regulation 1828 (effective June 17, 2004).

(1) The operative date of this regulation is the date it becomes effective under Section 11343.4 of the Government Code (thirty days after it has been approved by the Office of Administrative Law and forwarded to the Secretary of State) and it shall have no retroactive effect.

(2) Petitions filed prior to the operative date of this regulation, shall be reviewed, appealed and decided in accordance with this regulation as to procedures occurring after that date. All such petitions filed prior to July 1, 2004 and denied by Board Management must have perfected any access they may have had to a Board Member hearing no later than 60 days after September 10, 2008, the operative date of this regulation.

(3) The amendments to this regulation adopted by the Board on or about [insert adoption date] have no retroactive effect.

JOHAN KLEHS & COMPANY, INC.
STRATEGY • GOVERNMENT RELATIONS • ADVOCACY

HAND DELIVERED

March 3, 2011

Ms. Susanne Buehler, Chief
Tax Policy Division, Sales and Use Tax Department
Board of Equalization
450 N Street
P.O. Box 942879
Sacramento, CA 94279-0092

Dear Ms. Buehler:

Thank you for the Board of Equalization's (BOE) staff assistance in facilitating the interested parties meetings regarding proposed amendments to Regulation 1807, *Petitions for Reallocation of Local Tax, Petitions for Distribution or Redistribution of Transactions and Use Tax*.

Our firm represents the City of Livermore. We are offering our comments as a result of the 2nd interested parties meetings and as a submittal for the Business Taxes Committee meeting scheduled for April 26, 2011.

We recommend the Board Members utilize the chart, "Overview of the Local Tax Petition Process" (enclosed) as prepared by the BOE staff to demonstrate and clarify the various benchmarks and deadlines as a petition moves through the Regulation 1807 process. This chart is an excellent description of the process and will allow all parties to begin from the same discussion point.

We agree and support the revisions stated in "II. Staff Recommendation, Page 1 of 8" of the "Second Discussion Paper" provided for the 2nd interested parties meeting dated February 8, 2011. These recommendations have been agreed to based on discussions with the various parties from the 1st interested parties meeting that was scheduled on January 6, 2011.

Overall: Deadlines and Workload

The objective of the Regulation 1807 process should be a timely conclusion to arrive at the "right answer" and have local tax monies allocated to the correct party. However, the BOE staff still seems unwilling to insert what seems like even some of the most basic deadlines into the current process. In fact, currently a case could take longer to resolve than a two year legislative session

or even a four year Board Member term. We believe that such a length of time is unacceptable from a “fairness to the taxpayer” or “case management” point of view.

During the interested parties meetings, the BOE staff stated their desire to continue a process without deadlines as a necessity to get to the “right answer. Good management and fairness in any public agency process provides for imposed deadlines on all affected bodies so that all sides can arrive at the most accurate outcome. If a party has chosen to game the system, not abide by deadlines, then they should abide the decision reached by the Allocation Group, Appeals Division, and ultimately by the Board Members in a formal hearing.

BOE staff acknowledged that sometimes cases “sit on the shelf for six months” before the staff can get to work on a given case. Presently, only one BOE staff person in the Appeals Division is supposedly handling *all* of the tax allocation cases. Clearly, that person does an excellent job of working on each case and is highly respected by all parties. But no case should drag on for two, four, 12, or 20 years because the BOE chooses to ignore internal workload issues. Time and aging cases work against “getting to the right answer” in any process.

The lack of timelines inserted into the process and having one staff person handling all of the cases is clearly one of the prime reasons for the ongoing backlog.

Allocation Group (AG) Level

The AG should be empowered to gather as much information and evidence up front as possible when investigating a local tax allocation case. Empowering this unit early in the process will allow the Appeals Division to have the maximum information available so they can come to an accurate conclusion at the end of the process.

A petition for tax allocation should be vetted as much as possible by the time the AG has completed its investigation and recommendation to the Appeals Division.

Appeals Division (AD) Level

Under the current process, it seems that certain parties can “game the system”, holding back vital information, waiting to see what information may have come out of the AG level, and then using the appeals conference process to seek endless rebuttals to information as it comes to light in arguments during the process.

Once a case gets to the AD and an appeals conference has been scheduled, parties should only have “one bite at the apple” for rebuttal so that the AD can begin writing their decision.

Our suggested additional deadlines can be viewed in the “Overview of the Local Tax Petition Process” chart provided a part of this submission.

Overview of Local Tax Petition Process

The Roman numerals below refer to those boxes as listed on the chart provided by the BOE staff for this process.

III. Allocation Group Level

We have recommended the establishment of a 90 day time limit to issue a supplemental decision. Currently, the process can take *several years* to fully vet issues in order to arrive at an accurate conclusion. In the last interested parties meeting the staff stated that at this point in the process that cases might "sit on the shelf for six months." We feel the current timelines at this level are simply too long and open ended.

V. Appeals Division Level

Currently, the petitioner, notified jurisdictions, and the Sales and Use Tax Division (SUTD) will be notified of the appeals conference at least 45 days before the conference. Again, no deadline at this stage of the process.

We are requesting that a deadline be inserted at this level insuring that the appeals conference will be scheduled within six months of the AD receiving the case file.

VI. Appeals Division Level

Currently, a petitioner or notified jurisdiction may continue to investigate with the AG and the AG may issue a second supplemental decision. If a second supplemental decision is issued and an objection is filed by a party, then AD will schedule an appeals conference.

We believe a 60 or 90 day time limit should be established for the AG to issue a second supplemental decision. If an objection is filed by a party, then an appeals conference should be scheduled within 90 days.

VIII. Appeals Division Level

Currently, the Chief Counsel may approve an additional 90 days to prepare a Decision and Recommendation (D & R) upon request by the AD. We feel that this extension should be shortened to 30 days.

IX. Appeals Division Level

Currently, a Petitioner, notified jurisdiction, or the SUTD may appeal any D & R or Supplemental D & R (SD & R) by submitting a timely Request for Reconsideration (RFR) to the AD. This is an area is where gaming the process may take place.

Our recommendation is to eliminate this RFR and SD & R process altogether and have the parties go directly to a full Board hearing.

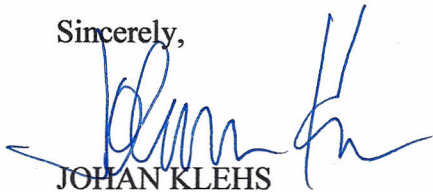
XII. Board Hearing Level

Currently, a notification of a Board Hearing is sent to all parties at least 75 days before a hearing. We are requesting that a hearing notice be issued within 90 days of the request for hearing.

We are grateful for the opportunity to voice our concerns about the current Regulation 1807 tax petition process.

Please feel free to contact me if I can be of any service to you in the future.

Sincerely,



JOHAN KLEHS

Enclosure As Stated

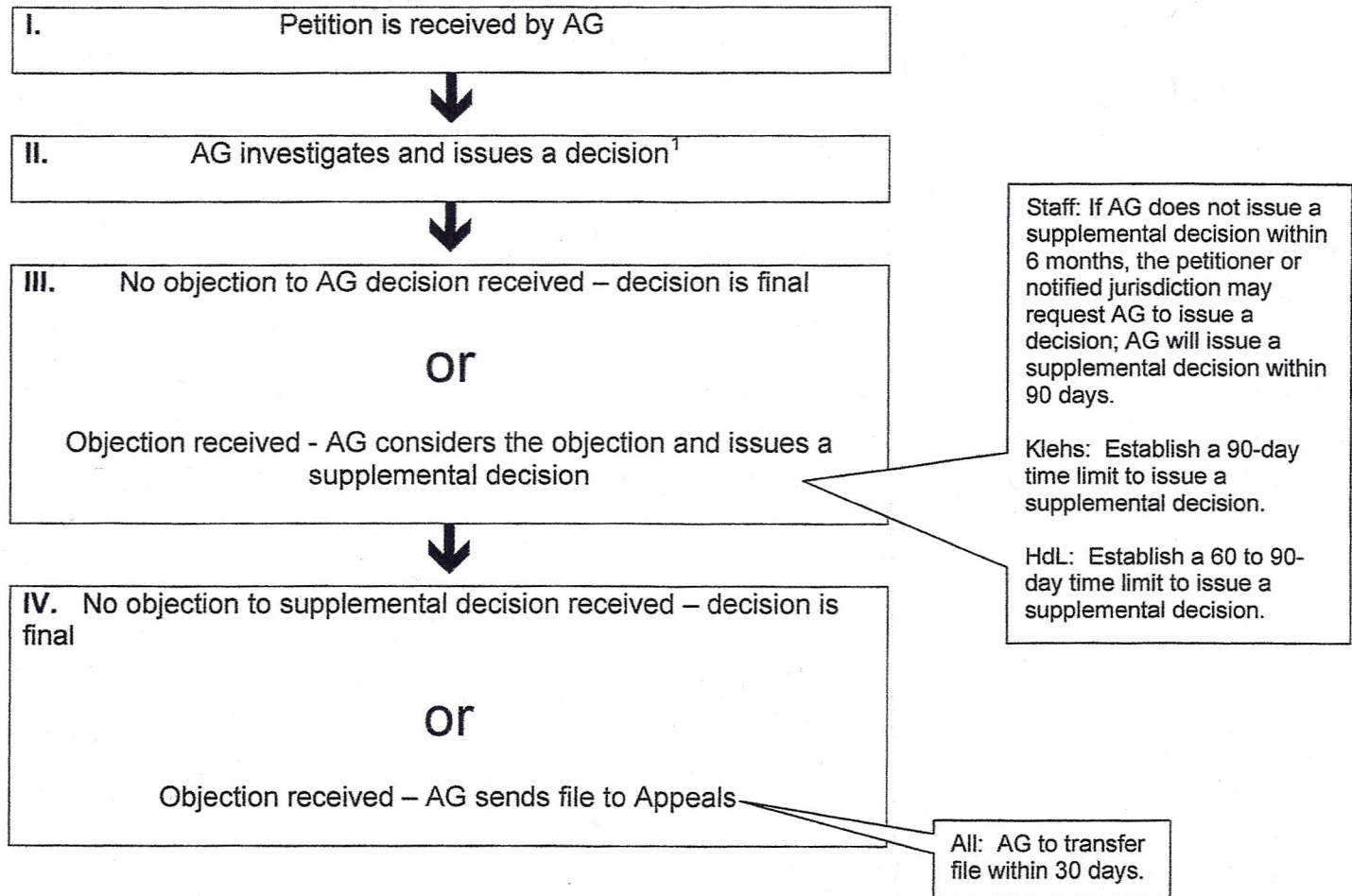
CC: Members of the Board of Equalization
Ms. Marcy Jo Mandel, State Controller's Office
Ms. Kristine Cazadd
Mr. David Levine
Ms. Carol Ruwart
Ms. Trecia Nienow
Ms. Lynn Whitaker
Mr. John Pomidor, City of Livermore
Ms. Robin Sturdivant, HdL Companies
Mr. Matt Hinderliter, HdL Companies

Overview of the Local Tax Petition Process

Page 1 of 3

This exhibit provides a general overview of the current local tax petition process. The callout boxes list the main suggested revisions to the process.

Allocation Group (AG) Level



Klehs: Reduce allowed time to 60 days.

HdL: Reduce allowed time to 60 days, but allow staff to request a 30-day extension.

¹ If AG does not issue a decision within 6 months, the petitioner may request AG to issue a decision; AG will issue a decision within 90 days of the request.

Appeals Division (Appeals) Level

V. The petitioner, notified jurisdictions, and SUTD will be notified of the appeals conference at least 45 days before the conference

All: On petitions that were denied by AG, notify jurisdictions that would be substantially affected if the petition were granted.



VI. Petitioner or notified jurisdiction may continue to investigate with AG and AG may issue a second supplemental decision

- If second supplemental decision issued and no objection is received – decision is final

Klehs and HdL: Require that Appeals schedule the appeals conference within 6 months of receiving file.

or

- If second supplemental decision issued and an objection is filed, Appeals will schedule an appeals conference

Klehs and HdL: Establish a 60 or 90-day time limit for AG to issue a second supplemental decision.

Klehs: If an objection is filed, require the appeals conference be scheduled within 90 days.



VII. Appeals conference held.

- Participants may request up to 30 days to submit additional documentation
- Other participants who disagree with the additional information presented are allowed 15 days to submit arguments or evidence in response

All: Allow participants 30 days to submit additional documentation; allow the other participants 30 days to respond.



VIII. Within 90 days of the appeals conference or final submission of additional information, Appeals will issue the D&R; the Chief Counsel may approve an additional 90 days to prepare the D&R upon request by Appeals

Klehs: After the allowed 45 days, do not allow additional responses, or allow Appeals to request additional information.

HdL: After the allowed 60 days, do not allow additional responses.



IX. Petitioner, notified jurisdiction, or SUTD may also appeal any D&R or Supplemental D&R (SD&R) by submitting a timely written Request for Reconsideration (RFR) to Appeals.

- If an SD&R is issued, the petitioner or any notified jurisdiction may appeal the SD&R by submitting a written request for Board hearing within 60 days of the mailing date of the SD&R.

Klehs: Shorten the extension request to 30 days.



X. No request for Board hearing is timely received in response to a D&R or SD&R – Appeals decision is final

Klehs: Eliminate the RFR and SD&R process.

or

Request for Board hearing received in response to a D&R or SD&R

HdL: Tighten the standards for a RFR request.

Board Hearing Level

XI. Request for Board hearing received



XII. Board Proceedings will send notification that a Board hearing is being scheduled to:

- SUTD,
- the petitioner,
- any notified jurisdiction,
- any other jurisdiction that would be substantially affected if the petition were granted, and
- the taxpayer(s) whose allocations are the subject of the petition

Notification of Board hearing is sent at least 75 days before the hearing.

Klehs: Require that either the hearing notice or a status report be issued within 90 days of the request for hearing.



Revenue Management for Local Government

Hinderliter, de Llamas & Associates
HdL Coren & Cone
HdL Software, LLC

March 1, 2011

Suzanne Buehler, Chief, Tax Policy Division
Sales and Use Tax Department
State Board of Equalization
P.O. Box 942879
Sacramento, CA 94279-0092

Dear Ms. Buehler:

We have listened carefully to the positions presented by all sides at both the January 6, 2011 and February 17, 2011 Interested Parties meetings regarding proposed amendments to Regulations 1807 and 1828, and appreciate the opportunity to have participated. In the areas where a consensus has been reached we encourage the Business Taxes Committee to adopt the changes recommended by Staff. We also respectfully request further consideration by the Business Taxes Committee and all Interested Parties of our stance on the following:

Accuracy and Timeliness

We agree that the primary and over-riding goal of Regulation 1807 is to ensure that the *correct* conclusion is reached regarding local tax allocation, a conclusion consistent with a company's business practices and controlling Regulations. We further concur with Muniservices' suggestion that a more clearly established and refined investigative process at the Allocation Group (AG) level would significantly improve efficiency.

Additional deadlines will not on their own advance the goals of efficiency or accuracy. However, we submit that the absence of a distinct deadline at any stage in the process also does little to forward either objective. Experience clearly shows that as a case ages it becomes *more* difficult to obtain accurate information. Business activities change, personnel changes, accounting records get archived/lost/destroyed, etc... Assuming that a case is being actively and diligently pursued a timely investigation will actually help insure accuracy, not the opposite.

Staff's position seems to be that any current delays in processing are a "workload issue", and additional time limitations will not be necessary once the present backlog is cleared. However, one could argue that a historical lack of any time limitations is a primary reason for the backlog. The lack of urgency at virtually any level meant that local tax cases were often assigned a low level of priority, resources, and management attention. We have come a long way, but we need to continue to "close the loop" to insure both timely *and* accurate investigations. Even with the additional deadlines we have proposed a local tax case could still take 3 years or more to work its way completely through the administrative process. Recognizing and understanding all of the inherent difficulties of investigating local tax cases we still find it difficult to accept that this is not enough time.

When and where Staff attributes lengthy delays to a backlog and/or lack of resources, we respectfully request that the Board do what is necessary to address that problem. Cross-training could provide additional manpower on a temporary or “as needed” basis without the additional cost of new, permanent positions. Perhaps there are also areas where the process itself could be re-designed so that an inordinate level of work and responsibility does not fall on the shoulders of any one individual. A robust process, with sufficient depth to avoid any bottlenecks that may arise due to a future spike in case volume or the occurrence of a truly difficult and involved case, is a goal we believe few would argue with. If the resistance to imposing any additional deadlines is due even in part to a belief that the current process is not robust and deep enough to handle them, we believe that not taking action is effectively side-stepping the issue.

Holding Distributions in Suspense

To again clarify – HdL maintains that distributions should be held in suspense *only* if the amount involved is above a certain threshold such that a reallocation would create a substantial hardship for the losing jurisdiction, and *only* if/when there have been at least two adverse decisions against said jurisdiction. To put it another way, in response to a petition filed by City A the Allocation Group launches an investigation and concludes that City B is incorrectly receiving a large amount of local tax. City B is notified, and allowed up to sixty days to file an appeal (an automatic 30 days plus the provision for a 30 day extension). An appeal is filed, and after careful consideration of the facts and arguments offered therein the Board again concludes that City B is not the proper recipient of the local tax in question. Only at this point would a possible suspension of future local tax allocations, pending exhaustion of the administrative appeals process, be considered.

That City B might be dependent upon the allocation stream in question, and that it would be therefore unfair to suspend future distributions, we believe misses the point entirely. If there is a legitimate question as to whether City B should be receiving the funds to begin with, its reliance on them becomes a real and pressing issue for all concerned, first and foremost City B. Allowing the local tax to continue flowing to City B during a 1-2 year plus administrative appeals process only exacerbates the potential problem.

It was suggested at the first Interested Parties meeting that the sheer size of a potential reallocation may in and of itself become a reason for the Board Members to not take action. We respectfully submit that this would be inappropriate, and patently unfair to the rightful recipient. Holding distributions in abeyance preserves and protects the Board Members’ discretion, and their ability to decide a local tax case solely on the merits.

It has also been suggested that the Board’s failure to make distributions is “illegal and without any legal basis or authority in the Code”. We respectfully disagree, and note that Board staff routinely suspends local tax distributions when a taxpayer’s schedules do not balance, or when some other problem is encountered in processing a return. We submit that the suspension of future distributions as part of the appeals process in a local tax case is not only appropriate, but well within the Board’s administrative purview.

Having worked closely with Board Staff and Management for over 20 years we are confident that such action would not be taken arbitrarily, and without a thorough and competent investigation. However, as a concession to those who do not share our confidence we suggest that a mechanism could be added to require Board member approval of any proposed suspension.

Required Disclosure of Revenue Sharing Agreements

We understand and respect that this is a very sensitive topic. For the record we have not questioned, and are not challenging the integrity of any participant in any current or future local tax case. Nor do we believe that the presence of a sharing agreement necessarily or automatically discredits the testimony of any party to the agreement. However, we maintain that this provision is necessary and appropriate for the following reasons:

- Board investigations of local tax cases have traditionally relied completely and solely upon information provided by the taxpayer. The taxpayer is in complete control of what information is released, and even who within the company is authorized or qualified to speak to the Board.
- When and where a rebate agreement exists the taxpayer has a clear, obvious and often substantial financial interest in the outcome of the local tax matter before the Board. Staff has acknowledged that the existence and terms of an agreement can be an important piece or component to the overall investigation of a suspected misallocation.

Weaknesses, inconsistencies, and gray areas in the Regulations and Annotations defining buying companies, field sales offices, master sales contracts, and title passage have allowed a few corporations to make very minor changes to their business operations in order to re-direct millions of dollars to whichever local jurisdiction offers the most lucrative rebate agreement, returning as much as 85% of the local tax dollars to the private sector. These corporations may firmly believe that they have acted within the “letter of the law”, and have met the Board’s minimum requirements. However, when challenged it is only natural that these firms may become defensive, guarded, and possibly less than completely candid in releasing information. While this falls short of outright fraud or falsification, there is no question that it does impact the Board’s ability to obtain a complete and accurate understanding of a taxpayer’s business activities.

Local tax cases have traditionally involved disputes between two or more jurisdictions, with the taxpayer remaining a neutral third party. However, as a number of cases currently working their way through the appeals process will demonstrate, the landscape has clearly changed. For 25 years HdL has prided itself on a business-friendly approach to our audit efforts, and frankly we do not enjoy or relish having a taxpayer as a direct opponent in a local tax matter. However we will continue to adapt and change as necessary in order to protect our clients’ interests. We respectfully request that the Board also consider what changes to its Regulations and/or business practices may be necessary to preserve the goal of issuing fair and correct decisions in local tax cases.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Matt Hinderliter", with a stylized flourish at the end.

Matt Hinderliter

cc: Honorable Jerome E. Horton, Chairman, Fourth District
Honorable Michelle Steel, Vice Chair, Third District
Honorable Betty T. Yee, Member, First District
Senator George Runner (Ret.), Member, Second District
Honorable John Chiang, State Controller, c/o Ms. Marcy Jo Mandel (via email)

(Via E-mail)

Mr. Alan LoFaso, Board Member's Office, First District
Mr. Lee Williams, Board Member's Office, Second District
Mr. Neil Shah, Board Member's Office, Third District
Mr. Robert Thomas, Board Member's Office, Fourth District
Ms. Natasha Ralston Ratcliff, State Controller's Office
Ms. Kristine Cazadd
Ms. Lynn Whitaker
Mr. Geoffrey E. Lyle
Ms. Leila Hellmuth
Mr. Jeffrey L. McGuire
Mr. Kevin Hanks
Mr. David Levine
Ms. Trecia Neinow
Ms. Carole Ruwart
Mr. Tom Hopkins
Mr. Leonardo Vega
Mr. Larry Micheli
Mr. Johan Klehs
Mr. Fran Mancia
Ms. Janis Varney



March 4, 2011

Susanne Buehler, Chief, Tax Policy Division
Sales and Use Tax Department
State Board of Equalization
P.O. Box 942879
Sacramento, CA 94279-0092

Re: MuniServices, LLC comments and suggestions to proposed amendments to Regulation 1807, *Petitions for Reallocation of Local Tax* and Regulation 1828, *Petition for Distribution or Redistribution of Transactions and Use Tax*

Ms. Buehler:

On behalf of MuniServices, we appreciate Board Staff's continued interest in considering our suggestions and comments during the interested party process for the above-noted regulations. The meetings and written correspondence have been especially beneficial in vetting the complexity of issues, and we are pleased that consensus on some of the issues have been reached through this process. At the last meeting, in addition to key staff recommendations, we raised a few concerns and suggestions to further improve the overall allocation process especially in the area of a) lengthy investigations, b) efficiency in the fact-finding process, c) commencing the compliance manual/ audit manual process related to allocations, and d) holding revenues in a "suspense" account. While we recognize the regulations set forth policy, and the manuals guide Board staff in performing their audit and investigation functions, we respectfully request the following considerations in the final draft regulations, and where appropriate the future compliance and or audit manuals:

a) Lengthy Investigations

Illustration

As early as 1998, we submitted petitions for reallocation for a number of cities where a retailer had sales offices. In 1999, the AG asked the field auditor to investigate. While the matter was under "investigation" the company was sold. The field auditor took 7 years to "investigate" and produced no new relevant facts. The auditor simply stated his mistaken opinion that telephony was a fixture or a material and thus the jobsite was the place of sale. (Regulation 1521 clearly defines telephony of this type as "machinery and equipment" not a fixture or material.) 7 years and no relevant facts were produced.

Then 4 and one-half years later, the AG finally got a tax accountant at the new owner to say that she had no knowledge of the situations before the acquisition. So, 11 and one-half years later, the investigation has produced no real results.

To put this in perspective, a child that started kindergarten at the start of this fruitless investigation would be a senior in high school when the fruitless investigation concluded.

Surrendering to uncooperative taxpayers

While such a delay is not the norm, neither is it an isolated case. And it is not always the mere length of the investigation that frustrates the hearing process. For example, in a recent case the Appeals Division ordered the Allocation Group to obtain certain factual information. After 7 months of investigation, the Allocation Group reported “Although the Department has followed-up dilligently with the taxpayer, it appears that the taxpayer is either unable, or more likely unwilling, to provide some of the information. In fact, to date, the taxpayer has responded with information to address only a fraction of the items the Department was asked to address...the Department feels at this point that allowing the taxpayer any further time to respond would not be productive.”

Here, despite an appeals conference being held and the Allocation Group being charged to get specific information, the Allocation Group “gave up.” We believe there is a better approach we can take to solving this sort of delay.

The key driver of delay

Our best understanding at this point is that there is one key driver of delay between submission of a petition and staff decision—length of the “investigation.” As stated by staff in their Initial Discussion Paper, p.2,

“Although staff also wants petitions to be resolved expeditiously, it does not believe an overall time limit is practical. Petitions for reallocation may require substantial investigation by AG and Appeals to determine whether a misallocation occurred...local tax disputes only involve reallocation or reported amounts; the taxpayer holding the records is not disputing a deficiency or supporting a claim for refund and thus lacks incentive to provide records. Local tax appeal cases take more time *primarily because of the delays in getting information from the taxpayers.*”

What causes the length of the “investigation”?

Assuming that the length of investigations is the key driver in the length of the delay, what determines the length of the investigation? The complexity of the investigation involves how much information must be obtained and how long it will take to get it. An example of “how much” could involve the number of factual issues and number of facts in each issue, and “how long” could involve taxpayer delay, difficulty in determining where to look for evidence, staff constraints and open-ended deadlines.

When is a long investigation a “delay”?

A “delay” is not simply a function of the amount of time it takes to get answers. It is also a function of the result of the time spent. In other words, whether a long investigation is a “delay”

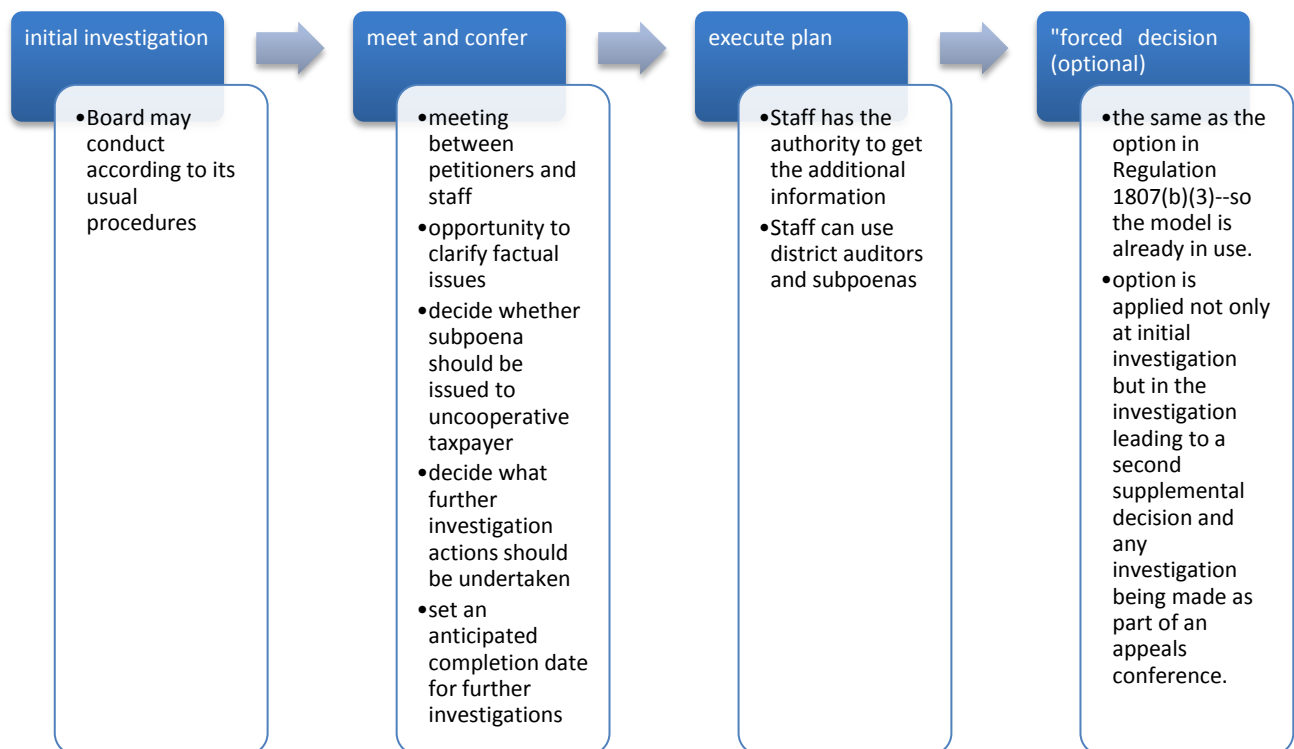
depends not only on the actual length of time but the return (measured in useful information) received from the investment (time in investigation).

Everyone wants to avoid long unproductive investigations such as the 11 ½ year investigation. Short unproductive investigations can be tolerated, if necessary, but ideally the goal is an investigation that yields a good amount of information compared to the length of time it took to get the information.

Delay must be addressed by managing the complexity and maximizing the Return on Investment (ROI). Since we cannot know for certain the full complexity or productivity of an investigation until it is over, workable solutions must be flexible enough to adapt to the reality of an investigation as it unfolds rather than being defined by our initial guesses about how the investigation will occur.

MuniServices' proposal

We propose a process with a limited initial period of time for the staff to conduct an initial investigation, followed by a meeting to determine additional investigative efforts, responses to taxpayer delay, and anticipated timelines, and supplemented with the right of the petitioner to terminate an unproductive investigation by “forcing” the decision.



This process has a number of advantages:

1. It gives an initial window for low-complexity investigations to be concluded.

2. It gives a flexible but aggressive initial investigation deadline.
3. It reduces the felt-delay because any investigation beyond the initial 270-days is agreed upon and has stated objectives. When expectations are jointly set, the same “waiting period” seems less burdensome.
4. It may also have the desirable side-effect of streamlining communications with the taxpayers because it should reduce duplicative information requests and time-wasting investigations of facts that are irrelevant to deciding the issues.
5. It allows the petitioners to end unproductive investigations.
6. It addresses the key factors driving the complexity, including taxpayer delay, investigation of irrelevant information, and difficulty in locating sources of information.

This process can be repeated at each level of the appeal except the appeal to the Board Members. Where the taxpayer is delaying in producing information in the post-appeals conference, the Appeals Division can simply refuse to receive any further information and issue the D&R based on the information that was timely produced. The taxpayer or petitioner, who wants to add to the record at that point, would be required to explain in its first briefing why the evidence was not included and the Board would need to rule on whether to allow that evidence at the Board meeting preceding the meeting at which the hearing is set.

The exact language we suggest to implement these solutions is in our attached “redline” version of Regulation 1807, which is attached as Exhibit 1.

b) Increasing efficiency in the fact finding process

In addition to the improved processes above, investigations could be made more efficient by implementing the following suggested changes that were also provided in our previous submittal of January 20, 2011.

1. Recommend that language be placed in the *Allocation Group Manual* stating that local taxpayer representatives should always be contacted first to discuss local business affairs. Presumably this would be the same person the petitioners have spoken to and they will tell the AG auditor the same thing. Once this is confirmed the AG auditor can contact corporate headquarters or tax department to discuss local tax allocation and clear up any discrepancies between what the local contact said and what the taxpayer headquarters believes.
2. Recommend that typical questions the AG auditor should ask also be placed in the *Allocation Group Manual*. Hopefully, this way everyone is assured that the correct questions have been asked and the answers can be relied upon.
3. Recommend that language be added to the Board’s *Audit Manual (AM)* or investigations made by district office auditors. These investigations must be given a certain priority by the audit staff, similar to the priority given to a claim for refund that is referred to a district office for investigation, and not considered a side item to be considered as a minor part of an audit. The *AM* should contain language instructing auditors on what steps should be taken to verify correct local tax allocation.

4. An important part of having the petitions investigated on a timely basis is for the field auditor to take ownership of the investigation. Board Auditors currently must account for time spent on audits and claims for refunds and must explain in detail any delays in the completion of these items. Similar requirements for investigations of local tax allocations should be included in the *Audit Policy and Management Guidelines Manual (APMG)*.
5. Field Audit Supervisors (Supervisors) and District Principal Auditors (DPA's) should be required to make sure these investigations are done on a timely basis. In the past to facilitate this, copies of follow-up memos written by the AG staff to the district offices were forwarded to an increasingly higher and higher level of Sales and Use Tax Department management in the hopes that supervisors and DPA's would monitor the progress of the investigations and see to it that they are completed on a timely basis. This practice was abandoned several years ago, but should be reinstated and formalized in writing in the *APMG*. Districts are also required to send reports on the status of investigations of claims for refunds. A similar requirement should be made for districts to report the status of local tax investigations.

In expanding numbers 2 and 3 above a decision table could be placed in both the Allocation Group Manual as well the AM to assist auditors, particularly new auditors in the AG and field auditors who do not deal with local tax issues on a regular basis. The purpose of such a table would be to help guide the auditors in making a decision as to the correct allocation of local tax. The table could be similar to the one found in CPPM Section 240.035 which helps compliance personnel issue the correct kind of permit. This ties into a better investigation up front which means a better and quicker decision on a petition. Also expanding on number 5 we believe that management involvement in these investigations is crucial in streamlining the investigative process. This can help ensure that all investigations are done on a timely basis and are complete.

c) Commencing the compliance manual/ audit manual process related to allocations

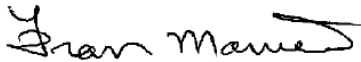
As mentioned at the second meeting for interested parties on February 17, 2011 we look forward to working with Board Staff on commencing the process for including the new regulations in the compliance/audit manuals. MuniServices on May 25, 2010 provided proposed revisions to CPPM Chapter 9 in a letter emailed to Ms. Lynn Whitaker. As mentioned at the February meeting, we look forward to participating in the future process to update the respective manuals.

d) Holding revenues in a “suspense” account

We reiterate our objection to the suggestion that monies be withheld and state again that the control over the monies should be a local matter subject to local control.

We look forward to your Formal Issue Paper and request that you take the above into consideration. Thank you for giving us the opportunity to comment and we look forward to continuing to work with the Board to find ways to continually improve the efficiency of this process.

Sincerely yours,



Francesco Mancia
Vice-president, Government Relations



Eric Myers, Esq.
Director, Local Tax Strategic Development



Robert J. Wils
Senior Local Tax Advisor

cc: Leila Hellmuth (via email)
Lynn Whitaker (via email)

MuniServices' Exhibit 1—suggested revisions to Regulation 1807

Regulation 1807. PETITIONS FOR REALLOCATION OF LOCAL TAX.

Reference: Sections 7209 and 7223, Revenue and Taxation Code

(a) DEFINITIONS.

...

(3) PETITION. "Petition" means a request or inquiry from a jurisdiction, other than a submission under Revenue and Taxation Code section 6066.3, for investigation of suspected misallocation of local tax submitted in writing to the Allocation Group of the Sales and Use Tax Department. The petition must contain sufficient factual data to support the probability that local tax has been erroneously allocated and distributed. Sufficient factual data should include, for each business location being questioned:

...

"Petition" also includes an appeal by a jurisdiction from a notification from the Local Revenue Allocation Unit of the Sales and Use Tax Department that local taxes previously allocated to it were misallocated and will be reallocated. Such a jurisdiction may object to that notification by submitting a written petition to the Allocation Group within 30 days of the date of mailing of the notification or within a period of extension described below. The petition must include a copy of the notification and specify the reason the jurisdiction disputes it. If a jurisdiction does not submit such a petition within 30 days of the date of mailing of the notification, or within a period of extension, the notification of the Local Revenue Allocation Unit is final as to the jurisdiction so notified.

The jurisdiction may request a 30-day extension to submit a written objection to a notification of misallocation from the Local Revenue Allocation Unit. Such request must provide a reasonable explanation for the requesting jurisdictions inability to submit its objection within 30 days and must be received by the Local Revenue Allocation Unit within 30 days of the date of mailing of its notification. Within five days of receipt of the request, the Local Revenue Allocation Unit will mail notification to the jurisdiction whether the request is granted or denied. If a timely request for an extension is submitted, the time for the jurisdiction to file a written objection is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the jurisdiction to submit a written objection to the notification of the Local Revenue Allocation Unit is further extended to the 60th day after the date of mailing of the notification of misallocation.

(4) PETITIONER. "Petitioner" is a jurisdiction that has filed a valid petition pursuant to subdivision (a)(3).

...

(b) REVIEW BY ALLOCATION GROUP.

(1) The Allocation Group will promptly acknowledge a submission intended as a petition.

(2) The Allocation Group will review the petition and issue to the petitioner a written decision to grant or deny the petition, including the basis for that decision. The written decision will also note the date of knowledge, and if other than the date the petition was received, will include the basis for that date. A reallocation will be made if the preponderance of evidence, whether provided by petitioner or obtained by Board staff as part of its investigation of the petition, shows that there was a misallocation. If the preponderance of evidence does not show that a misallocation occurred, the petition will be denied. The Allocation Group has 270 days from the date Allocation Group receives the petition to conduct its initial investigation of the petition. At the end of that 270-day period, if no decision has been issued, the Allocation Group and petitioner will meet and confer, within 30 days, on the scope and timeline of further investigations, if any, according to rules to be promulgated in the CPPM.

~~(3) If the Allocation Group does not issue a decision within six months of the date it receives a valid petition~~At any time after the meet-and-confer meeting in (b)(2), the petitioner may request that the Allocation Group issue its decision without regard to the status of its investigation. Within ~~90-30~~ days of receiving such a request, the Allocation Group will issue its decision based on the information in its possession.

...

(6) The petitioner or any notified jurisdiction may appeal the decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's decision, or within a period of extension authorized by subdivision (b)(~~109~~). If no such timely objection is submitted, the decision of the Allocation Group is final as to the petitioner and all notified jurisdictions.

(7) If the petitioner or a notified jurisdiction submits a timely written objection to the decision of the Allocation Group, the Allocation Group will consider the objection and issue a written supplemental decision to grant or deny the objection, including the basis for that decision. The Allocation Group has 90-days to conduct its supplemental investigation of the petition. At the end of that 90-day period, the Allocation Group and petitioner will meet and confer on the scope and timeline of further investigations, if any, according to rules to be promulgated in the CPPM. A copy of the supplemental decision will be mailed to the petitioner, to any notified jurisdiction, and to any other jurisdiction that is substantially affected by the supplemental decision.

(8) At any time after the meet and confer in (b)(7), the petitioner may request that the Allocation Group issue its supplemental decision without regard to the status of its investigation. Within 30 days of receiving such a request, the Allocation Group will issue its decision based on the information in its possession.

~~(89)~~ The petitioner or any notified jurisdiction may appeal the supplemental decision of the Allocation Group by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(~~109~~). If no such timely objection is submitted, the supplemental decision of the Allocation Group is final as to the petitioner and all notified jurisdictions.

~~(109)~~ The petitioner or any notified jurisdiction may request a 30-day extension to submit a written objection under subdivision (b)(6) or under subdivision (b)(~~98~~), as applicable. Such request must provide a reasonable explanation for the requesting jurisdiction's inability to submit its objection within 30 days, must be copied to all other jurisdictions to whom the Allocation Group mailed a copy of its decision or supplemental decision (to the extent known

by the requesting jurisdiction), and must be received by the Allocation Group within 30 days of the date of mailing of its decision or supplemental decision. Within five days of receipt of the request, the Allocation Group will mail notification to the petitioner and to all notified jurisdictions whether the request is granted or denied. If a timely request for an extension is submitted, the time for the petitioner and any notified jurisdiction to file a written objection to the decision or supplemental decision of the Allocation Group is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the petitioner and all notified jurisdictions to submit a written objection to the decision or supplemental decision of the Allocation Group is further extended to the 60th day after the date of mailing of the decision or supplemental decision.

(c) REVIEW BY APPEALS DIVISION.

(1) The petitioner or any notified jurisdiction may appeal the supplemental decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's supplemental decision, or within a period of extension authorized by subdivision (b)(9). Such an objection must state the basis for the objecting jurisdiction's disagreement with the supplemental decision and include all additional information in its possession that supports its position.

(2) If a timely objection to its supplemental decision is submitted, the Allocation Group will, within 30 days of the receipt of the objection, prepare the file and forward it to the Appeals Division. The petitioner, all notified jurisdictions, any other jurisdiction that would be substantially affected if the petition were granted, and the Sales and Use Tax Department will thereafter be mailed notice of the appeals conference, which will generally be sent at least 45 days prior to the scheduled date of the conference.

...

(3) The appeals conference is not an adversarial proceeding, but rather is an informal discussion where the petitioner, any notified jurisdictions who wish to participate, and the Sales and Use Tax Department have the opportunity to explain their respective positions regarding the relevant facts and law to the Appeals Division conference holder. To make the conference most productive, each participant should submit all facts, law, argument, and other information in support of its position to the Appeals Division conference holder, and to the other participants, at least 15 days before the date of the appeals conference; however, relevant facts and arguments will be accepted at any time at or before the appeals conference. If, during the appeals conference, a participant requests permission to submit additional written arguments and documentary evidence, the conference holder may grant that participant 15-30 days after the appeals conference, ~~or 30 days with sufficient justification~~, to submit to the conference holder, with copies to all other participants, such additional arguments and evidence. Any other participant at the conference who is in opposition to the requesting participant on the issue(s) covered by the additional submission is allowed 15-30 days to submit to the conference holder, with copies to all other participants, arguments and evidence in response. No request by a participant for further time to submit additional arguments or evidence will be granted without the approval of the Assistant Chief Counsel of the Appeals Division or his or her designee. The Appeals Division on its own initiative may also request, at or after the appeals conference, further submissions from any participant. The Appeals Division will not accept argument or evidence beyond these 30-day deadlines, except upon agreement of all participants.

...

(d) REVIEW BY BOARD.

(1) The petitioner or any notified jurisdiction may submit a written request for Board hearing if it does so to the Board Proceedings Division within 60 days of the date of mailing of the D&R or any SD&R. Such a request must state the basis for the jurisdiction's disagreement with the D&R or SD&R as applicable and include all additional information in its possession that supports its position. along with justification why that additional factual information was not included in the Appeals Conference. Board Members will rule on the admissability of that additional information no later than 75 days before the date the hearing is set. The Board will promulgate policies regarding the scheduling of these admissability hearings.

...